

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 19

In the Matter of:

Glacier Northwest d/b/a
CalPortland,

Case Nos. 19-CA-203068
19-CA-211776

Respondent,

and

Teamsters Union Local 174,

Union.

Place: Seattle, Washington

Dates: March 2, 2023

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UNITED STATES OF AMERICA
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CALPORTLAND,

Respondent,

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TEAMSTERS UNION LOCAL 174,

Union.

Case Nos. 19-CA-203068
19-CA-211776

The above-entitled matter came on for hearing, pursuant to notice, before **JEFFREY D. WEDEKIND**, Administrative Law Judge, at the National Labor Relations Board, Region 19, Jackson Federal Building, South Auditorium, 4th Floor, 915 Second Avenue, Seattle, Washington 98174, on **Thursday, March 2, 2023, 9:02 a.m.**



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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Brent Nordyke		1485 1489	1464		
Dirck Armitage	1491	1541 1548 1552		1562 1564	
Scott Nicholson	1565	1584 1585			
Rob Johnson	1589	1599			
Melanie O'Regan	1602 1677	1683 1703	1717		

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E X H I B I T S

EXHIBIT

IDENTIFIED

IN EVIDENCE

Respondent :

R-16

1572

1577

R-17

1584

WITHDRAWN

1 **P R O C E E D I N G S**

2 JUDGE WEDEKIND: On the record. I believe this is day 8
3 of the Glacier hearing.

4 Any unfinished business you want to discuss before we get
5 started with witnesses?

6 MS. CHEREM: No, Your Honor.

7 JUDGE WEDEKIND: Okay. Did you get the GPS data?

8 MS. CHEREM: I did.

9 JUDGE WEDEKIND: Okay. All right. So we're going to
10 bring Mr. Nordyke back up to the stand?

11 MR. PAYNE: That's correct, Your Honor.

12 JUDGE WEDEKIND: Mr. Nordyke, would you like to come up,
13 and we were going to start redirect, as I recall.

14 MR. PAYNE: Yes, Your Honor.

15 MS. CHEREM: Yes, Your Honor.

16 JUDGE WEDEKIND: Okay. Welcome back.

17 THE WITNESS: Thank you, sir.

18 JUDGE WEDEKIND: You're -- you're still under oath, okay?
19 Whereupon,

20 **BRENT NORDYKE**

21 having been previously sworn, was called as a witness herein
22 and was examined and testified as follows:

23 THE WITNESS: Yes, sir.

24 JUDGE WEDEKIND: All right. Redirect.

25 MR. PAYNE: Do you need to pour yourself a water before we



1 begin?

2 THE WITNESS: Probably.

3 JUDGE WEDEKIND: Go for it.

4 MR. PAYNE: Okay.

5 MR. PAYNE: Are you ready?

6 THE WITNESS: I'm ready when you are.

7 **REDIRECT EXAMINATION**

8 Q BY MR. PAYNE: Okay. Well, let me get something out of
9 the way here quickly. Do you know Adam Doyle?

10 A Yes.

11 Q And how do you know Adam Doyle?

12 A We were co-workers at Glacier Northwest. He was a
13 dispatch coordinator while I was -- and a concrete salesman
14 while I worked in the --

15 Q Did you ever say to Adam Doyle in 2017 words to the
16 effect, "If there's a strike, typically a union will pick a
17 company and make an example out of them"?

18 A No.

19 Q Are you sure you didn't say that?

20 A I didn't -- I -- I think we had a discussion about who led
21 the negotiations from the company side, but I didn't talk
22 about -- 2017 was my first experience with a Teamster 174
23 strike. So I had no knowledge of what they did or anything
24 like that. I would not have talked to Adam about that.

25 Q Okay. Let's talk now about mat pours for a moment. If

1 you were going to call in all available drivers, would you even
2 ask for volunteers if that was what you intended to do?

3 A Generally, I would. I don't really -- there's no real
4 reason to ask for volunteers if we're going to bring everybody
5 in, but we would still post the work on the callout list. You
6 know, we have -- we have a mat pour this Saturday if you'd like
7 to volunteer, let dispatch know. There was no distinction when
8 we made the roster whether they volunteered or not, but that
9 would be part of the recording that would be posted.

10 Q Okay. And what do you mean by available drivers?

11 A Drivers that were, you know, on light duty or L&I or
12 medical leave were obviously unavailable. We also, if a driver
13 had requested the day off on Friday before a mat pour or the
14 day off on Monday after a mat pour, we would excuse them from
15 working the mat pour.

16 Q Okay. So if someone were to listen to the call list, so
17 to speak, and his name was not on it, what would that tell you
18 in all probability?

19 A I would -- it would be my understanding that that driver
20 had vacation scheduled for Monday or Friday, or both.

21 Q Okay. And when you refer to the posting of start times,
22 what -- what are you referring to now when you were talking
23 about volunteers and so on?

24 A The callout list, the -- the call recording for the
25 drivers to -- to call in to get their start times.

1 Q Okay.

2 MR. PAYNE: Just a moment.

3 (Counsel confer)

4 Q BY MR. PAYNE: And let me -- let me make sure I've got
5 this straight. During the week, if you are going to use a --
6 you're going to have a mat pour, how do you notify drivers, and
7 I'm not talking about the posting now, I'm talking about are
8 drivers notified with a recording of some sort?

9 A Generally speaking, we would -- when we post it, for
10 example, on Tuesday at 5 p.m. when we posted the start times
11 for Wednesday, at the beginning of the recording there would be
12 a message about a -- remember guys, there's a mat pour for
13 Saturday. If you'd like to volunteer, let dispatch know. Here
14 are your start times for X day, and then they'd go through the
15 normal recording with the start times.

16 Q Okay. And when do you actually assign the start times for
17 that, let's say Saturday mat pour?

18 A On Friday.

19 Q What -- by what time?

20 A By 5 p.m.

21 Q Okay. And how are they assigned again?

22 A Once the roster is built, we assign the start times by
23 seniority.

24 Q Okay. And they're assigned on a recording; is that
25 correct?

1 A Yeah. Yes.

2 Q Okay.

3 MR. PAYNE: Excuse me, Your Honor.

4 JUDGE WEDEKIND: What -- what about the volunteers? That
5 doesn't make any difference?

6 THE WITNESS: On --

7 JUDGE WEDEKIND: About how -- how they're assigned start
8 times?

9 THE WITNESS: No, so you built a roster. So you have, you
10 know, X number of guys on this -- on your master list or the
11 list of drivers, and then volunteers you would put on the list,
12 and then guys that you forced you put on the list, and once you
13 have the list of guys, you arrange them by seniority and
14 assigned times by seniority. The senior guys always start up
15 earlier than the junior guys.

16 JUDGE WEDEKIND: I see. Thanks.

17 Q BY MR. PAYNE: So the earlier notice, the recording during
18 the week, let's say, for a Saturday mat pour, would that be
19 when the mat pour is anticipated? Is that the time when you
20 would give that earlier notice?

21 A Yeah, that's how we met the -- the requirement of
22 notifying drivers of anticipated work by 12 on Thursday.

23 Q Okay. There were some cross-exam questions about your
24 authority as a transportation manager when preparing your
25 spreadsheet summary, which was Respondent Exhibit 9, and you

1 were asked a number of questions about whether you spoke with
2 the drivers, such as Baker, Schwartz or Wimmer, before you
3 finalized your spreadsheet, and you said no, I did not speak
4 with them.

5 A Correct.

6 Q Do you know why you didn't speak with those individuals
7 who were on your spreadsheet?

8 A So the driver's strike began August 11th. I worked the
9 11th, 14th, 15th, 16th, and 17th. When I left the office on
10 the 17th, the drivers were still on strike. So they weren't
11 available for me to speak to. Justin and Melanie asked for the
12 spreadsheet on the 16th. When I finalized it, at that point,
13 the drivers were on strike. They weren't available for me to
14 speak to. So I wasn't able to speak to any of them --

15 Q So you didn't go out to the picket line and say, hey, come
16 on over here; I've got some questions for you?

17 A No, I didn't -- I -- I didn't think it was appropriate.
18 I -- I -- yeah, no, I didn't do that.

19 Q Okay. If there is a mat pour and a driver is given a
20 start time, and he doesn't show up, have you disciplined
21 drivers for that in the past?

22 A Yes.

23 Q Okay. And how often have you disciplined them?

24 A Initially, when I started the position in 2012, I think a
25 handful of times the first couple of years, and then it didn't

1 really become a -- it wasn't an issue after that the first
2 couple of years.

3 Q And in what form did you discipline them with -- what
4 level of discipline?

5 A Fair warning letters.

6 Q Okay. Do you have a CDL?

7 A I do not.

8 Q Pardon me.

9 A I do not.

10 Q And who is Western Cascade again?

11 A They were the third-party vendor that we used to maintain
12 our ready-mix fleet.

13 Q Okay. And for what reason would these Western Cascade
14 employees have a CDL, if you know?

15 A To test drive trucks after they repaired them and to, you
16 know, at that point in time, most of the fleet was parked on
17 West Marginal. So they would need to transport the trucks from
18 West Marginal over to East Marginal in order to work on them,
19 and then put them back after they were finished.

20 Q And would they be driving full trucks?

21 A No.

22 Q And how many day-shift Western Cascade mechanics had CDLs
23 in 2017, if you know?

24 A I believe it was two, maybe three.

25 Q And did they have their own shop manager, foreman, et

1 cetera?

2 A Yes.

3 Q Pardon me.

4 A Yes, they did.

5 Q Okay. And how many Glacier Northwest supervisors or
6 managers who were located at Duwamish had CDLs on the morning
7 of August 11th?

8 A I don't believe any supervisors had a CDL. I don't know
9 if Brandon (phonetic) had a CDL or not, but he was able to
10 operate that vehicle.

11 Q Who is Brandon?

12 A Brandon was one of the QC technicians.

13 Q Okay. Any managers that you know of that had a CDL on
14 August 11th at Duwamish?

15 A No.

16 Q No?

17 A No, that I know of.

18 Q Okay. On cross-exam, you said that you paid the Western
19 Cascade mechanics \$100 a trip to shuttle trucks across the
20 river after the strike started on August 11th. Can you explain
21 that process and what was going on then?

22 A I didn't say that.

23 Q Okay. Can you tell me what -- how -- how we did pay them,
24 and did they shuttle trucks?

25 A If -- so like many mechanic shops, they had a flat rate to

1 move trucks back and forth across the river that they would
2 charge us. So in the general course of business, if they
3 needed to get a truck to do maintenance, they would charge us
4 that flat fee just to get the truck before they started work on
5 the maintenance.

6 Q Okay. And did they transfer any trucks for you guys after
7 the strike started; transfer, by that I mean across the river?

8 A I don't know if they did any on Friday. Most of the
9 trucks were transferred by Bob Nordness and Scott Folwell on
10 Monday, Tuesday, and Wednesday. They would drive the trucks
11 over to West Marginal. I would meet them over there in my
12 pickup and give them a ride back to the yard. They would get
13 two more trucks, drive them over to West Marginal. I would
14 meet them over there, drive them back to the yard. We
15 continued that process till we got all the trucks back over to
16 West Marginal.

17 Q And do you know if any of the Western Cascade mechanics
18 were involved in that transfer of trucks on Monday, Tuesday,
19 and Wednesday?

20 A They were not.

21 Q Okay. Let's take a quick look at Respondent Exhibit 9 now
22 for a minute. Do you have that nearby?

23 MS. CHEREM: Can you repeat Bob and Scott's names? I
24 didn't get them fully.

25 THE WITNESS: Bob Nordness, N-O-R-D-N-E-S-S.

1 MS. CHEREM: Um-hum.

2 THE WITNESS: And Scott Folwell.

3 MS. CHEREM: Okay. Thank you.

4 Q BY MR. PAYNE: Let me call your attention to pages 41
5 through 47.

6 A Okay.

7 Q In the middle of each of those pages, it says, left job.
8 Who -- who is it that wrote that in there?

9 A Robert Burens.

10 Q Did you reach a conclusion about what Robert Burens was
11 advising by writing that on these sheets?

12 MR. BERGER: Objection. Calls for speculation.

13 JUDGE WEDEKIND: No, overruled. It doesn't really call
14 for speculation.

15 MS. CHEREM: Well, just a point of clarification. It's
16 not an objection. Are you also meaning to include 39 and 40
17 which have the same notation or were they left out on purpose?

18 MR. PAYNE: No, that -- those are included as well.

19 MS. CHEREM: Okay. So starting on 39.

20 JUDGE WEDEKIND: You're asking for his under -- does he
21 have an understanding --

22 Q BY MR. PAYNE: Yeah, do you have an understanding of what
23 the message was or what you were to conclude from receiving
24 that indication on these driver's daily reports from Robert?

25 A Yes. I had asked Robert to let me know on the timesheets

1 which drivers had left the job with concrete, and I don't
2 remember how he got these, but he sent them to me, and I
3 checked to make sure that left job is what I thought it was
4 with Robert, and he said yeah, they left the job with concrete.
5 So that's what I took that to mean.

6 Q Well, look at page 45 for a moment.

7 A Um-hum.

8 Q It says, light duty?

9 A Yeah.

10 Q What -- did you take that to mean he left the job with
11 concrete?

12 A Well, I knew Mike was not delivering that day. So I did
13 not take that to mean that he left the job with concrete
14 because he did not deliver any concrete.

15 Q Well, what conclusion, if any, did you reach about that?

16 A That Robert made a mistake.

17 Q Okay. And how many hours did this light duty person get
18 credited for on that day?

19 MS. CHEREM: Objection. Relevance.

20 JUDGE WEDEKIND: Overruled.

21 A I -- I don't know what Robert approved.

22 Q BY MR. PAYNE: Okay. Can you tell by looking at the
23 driver's daily report what, in all probability, he would have
24 been paid for that day?

25 MS. CHEREM: Again, speculation. Objection.

1 JUDGE WEDEKIND: Why is it important? Now -- now I'm
2 wondering what -- what's so important about someone's pay --

3 MR. PAYNE: He -- that perhaps left job just simply means
4 he didn't complete the entire days' worth of work, Your Honor.

5 MS. CHEREM: He's already testified as to his
6 understanding and how he -- Respondent is free to argue that on
7 brief, what -- what it could have meant.

8 MR. PAYNE: No, I don't believe he has.

9 JUDGE WEDEKIND: Do you -- do you know anything -- do you
10 have any personal knowledge about what actually happened with
11 this individual, Weinhart (phonetic)?

12 THE WITNESS: I do not.

13 JUDGE WEDEKIND: Okay.

14 Q BY MR. PAYNE: Let's talk about employee discipline now
15 for a minute. In 2017, was there anyone else beside you in
16 management in King County that had authority to issue
17 discipline?

18 A Yes.

19 Q Who?

20 A Robert Burens, the Snoqualmie superintendent, and I -- I'm
21 sorry, I can't remember who it was at that time. I think it
22 was Phil Weiss (phonetic), but I'm not 100 percent sure on
23 that, Justin Denison, Melanie O'Regan certainly could.

24 Q Okay. And when I'm talking about in King County, I'm also
25 referring to people who -- members of management who could

1 discipline someone in King County.

2 A Oh, if we're talking about operators as well and laborers,
3 all the plant superintendents could issue discipline. So that
4 would include Dave Siemering, I'm not -- I don't know who the
5 ready-mix supervisor was in Snoqualmie at that time.

6 Q Anyone else within the company who could issue discipline?

7 A Justin Denison --

8 Q Okay.

9 A Scott Nicholson, Melanie O'Regan, and -- and Brian
10 Sleeper.

11 Q And who's Brian Sleeper?

12 A He was -- I don't know what his title was. He was in HR
13 at corporate.

14 Q Where at? Where was he located?

15 A He was in Glendora at the time, I believe.

16 Q In Glendora. Where is --

17 A Glendora, California. I'm sorry.

18 Q Okay. And are you aware of whether Melanie O'Regan issued
19 discipline to drivers in the past?

20 MS. CHEREM: Objection. Vague. Where are we talking
21 about now? Yesterday they raised the same concern. King
22 County?

23 Q BY MR. PAYNE: Are you aware of whether Melanie O'Regan
24 issued discipline to Local 174 drivers in the past?

25 A Before the strike, or -- I -- she -- she did. I don't

1 remember if it was before or after the strike.

2 Q Okay. And are you aware of whether Justin Denison issued
3 discipline to drivers prior to August 11th, 2017?

4 A I -- I know he issued discipline. I don't know if it is
5 before or after the strike.

6 Q And have you ever issued multiple warning letters for the
7 same offense to a group of drivers?

8 A So if I issued warning letters to more than one driver at
9 a time --

10 Q For the same offense at the same time, yes.

11 A Yes, I have.

12 Q Okay. Can you describe that set of circumstances?

13 A Generally, if I was issuing discipline to more than one
14 driver for doing the same thing, it was in response to not
15 showing up for work or showing up late or not reporting to
16 work, really. That's all I can think of.

17 Q Okay. Was there a degree of seriousness, to your
18 knowledge, that would cause Justin Denison to be more involved
19 in the disciplinary process than normal?

20 MR. BERGER: Objection. Vague. If you can --

21 JUDGE WEDEKIND: I do think it's leading. If you could
22 ask him under what circumstances was Justin get involved --

23 Q BY MR. PAYNE: Okay. Under what circumstances would
24 Justin Denison get involved in issuing discipline?

25 A The example I could think of is behavioral where we had a

1 problem with a driver being belligerent with customers and
2 inspectors on job sites, and Justin got involved in the
3 discipline to that driver.

4 Q And do you know if Justin actually issued the discipline?

5 A He did.

6 Q Okay. And you mentioned Melanie O'Regan has issued
7 discipline to 174 drivers; is that correct?

8 A I can think of one instance where she did, yes.

9 Q What was that instance?

10 A A driver had a serious incident when they struck a
11 pedestrian in a crosswalk, and Melanie wrote a termination
12 letter and gave it to that driver. I should say I don't know
13 if she gave it to him personally or if it was mailed.

14 Q If it was what? Say that again.

15 A If she gave it to him personally or if it was mailed.

16 Q Okay. I believe you've labeled that a serious matter.
17 Would that be a serious matter that you're referring to here
18 where she issued a termination letter?

19 A Any termination letter would have been a serious matter.

20 Q Okay. And that would mean -- would Melanie get involved
21 in terminations, to your knowledge?

22 A Yeah, terminations generally went to the VP office before
23 being, I wouldn't say approved, but before we move forward with
24 a termination, the VP would get involved.

25 Q Okay. And the VP in this case is who?

1 A Melanie O'Regan.

2 Q Okay. And what involvement would Melanie have? I mean,
3 would she just look at the paperwork and say go, or I mean,
4 what -- explain the involvement?

5 A In a termination?

6 Q Yes.

7 A She would want to know everything that happened. I don't
8 know if she talked to anybody else, but you know, a termination
9 is a serious matter. So she'd want to know everything that
10 happened, make sure that we did everything correctly and that
11 it was justified.

12 Q Okay. And in every case of issuing a warning letter for
13 you, when you've issued it, have you always met with the
14 employee first to get his side of the story or have you
15 sometimes not?

16 A It depends on the circumstance. If a driver was in an
17 accident, I would -- we would obviously do an accident
18 investigation and talk to the driver. If there were some sort
19 of behavioral issue or argument with a coworker or anything
20 like that, we would talk to both sides. If a driver didn't
21 show up for a mat pour, as happened in 2012, I'd meet with the
22 driver in that case.

23 Q Okay. But I think you said in some circumstances. Are
24 there some circumstances when you might not meet the driver
25 before issuing discipline?

1 A If a driver didn't show up for a mat pour. Like, if a
2 driver did not show up for a mat pour or did not show up to
3 work and they didn't call ahead of time, then yes, I would -- I
4 would issue warning letters without talking to them first.

5 Q Okay. Do you know whether everyone in your chain of
6 command, back in 2017, and by that I'm referring to Melanie and
7 Justin Denison, always followed the exact same disciplinary
8 procedures that you followed?

9 A I don't know.

10 Q And did the plant manager at Kenmore have the authority to
11 issue discipline?

12 A Yes.

13 Q At what level of discipline did he have the authority to
14 issue?

15 A The same authority that I have. So he could write warning
16 letters. He could suspend somebody.

17 Q Did you have a plant manager at Snoqualmie in 2017?

18 A I don't remember if the same plant manager was doing
19 ready-mix and aggregate at the time. Now, we have them
20 separated. I can't remember in 2017 if that was the case.

21 Q Okay. Do you have a personal knowledge of what procedures
22 Melanie followed before she issued a disciplinary action?

23 A I don't.

24 Q And do you have personal knowledge of what procedures
25 Justin filed before he -- followed before he issued discipline?

1 A I don't.

2 Q Do you know if the company has a policy that says
3 discipline issued to 174 drivers must always use the following
4 form, a particular paper form?

5 MR. BERGER: Objection. Leading.

6 JUDGE WEDEKIND: Overruled. Do you know?

7 A There's no policy that I know of, no.

8 Q BY MR. PAYNE: Okay. And do you know if there are
9 issuing -- issuances of discipline that do not always use the
10 same paper form as you use?

11 A Terminations generally do not use that same form.

12 Q And do you know if there are other forms of discipline
13 that sometimes do not use the same form?

14 A I -- I don't know.

15 Q You talked about Melanie issuing discipline for a "major
16 event", and what -- that major event involved an accident; is
17 that correct?

18 A Yes, sir.

19 Q Do you believe that a group of drivers who come back to
20 the yard with full loads of concrete, stop, park their trucks,
21 and get out of their trucks and walk to a picket line is a
22 major event to leave their trucks in the yard?

23 MS. CHEREM: Objection. I mean, that's -- it's leading
24 and it calls for a -- a legal conclusion.

25 JUDGE WEDEKIND: In your -- in your job, do you have to

1 make decisions what's a major event or not?

2 THE WITNESS: Yeah.

3 JUDGE WEDEKIND: Okay. In what context?

4 THE WITNESS: Anything that would lead to termination or
5 was really egregious, like, two employees fighting each other
6 or a customer -- or you know, fighting with a customer or an
7 inspector on the job site, something sort of outside the norm.

8 JUDGE WEDEKIND: And why would you have to make a
9 determination about these other examples you gave me other than
10 terminations?

11 THE WITNESS: So if two employees are fighting with each
12 other, you know, we could terminate one of them or just the
13 fact that we have two employees fighting is -- it's not -- it's
14 not being late to work. It's not not showing up for work.
15 It's something a little more elevated that we want to make sure
16 we care of and they don't resolve that issue right away. You
17 know, if somebody is having a problem with a customer or an
18 inspector, obviously there's the sales side of it and you know,
19 customer relations side that we don't want to ruin
20 relationships because we have a driver that's having a bad day.
21 Or the inspector's having a bad day and picked on the driver.
22 Either case.

23 JUDGE WEDEKIND: So that -- but just to nail this down.
24 So if it's a -- I mean, again, why do you need to make the
25 determination that it's a major event? Does that affect what

1 you do in some way? Other than a termination, which apparently
2 you say has to go to the VP, right?

3 THE WITNESS: Yes. Yes. A termination would be -- that
4 determination would be made above my pay grade to the VP.

5 JUDGE WEDEKIND: But are you say -- well, so why do you
6 have to -- just tell me, why do you have to make the
7 determination that it's a major event, then?

8 THE WITNESS: To determine whether I should be the one
9 making the decision or if it needs to get raised up a level in
10 management. Whether GM or the vice president needs to be
11 involved in the decision.

12 JUDGE WEDEKIND: Okay.

13 So overruled.

14 Q BY MR. PAYNE: Would an event involving 16 employees be a
15 major event?

16 A I would think so.

17 Q Would an event involving 39 employees be a major event?

18 A I would think so.

19 Q Based on your experience, once a truck is loaded, who is
20 responsible for the safety and delivery of that load?

21 A The driver.

22 Q And concerning the paper forms used to document
23 discipline, are you aware of whether every manager in your
24 chain of command uses the same paper form?

25 MS. CHEREM: Objection. Asked and answered.

1 JUDGE WEDEKIND: I don't remember the question or the
2 answer. So overruled.

3 A I don't know.

4 Q BY MR. PAYNE: Let me call your attention to General
5 Counsel Exhibit Number 8 for a moment.

6 MR. PAYNE: Can you put that up, Ross?
7 Can you blow it up a little, Ross?

8 MR. MERRITT: Sure.

9 MR. PAYNE: Thank you.

10 Q BY MR. PAYNE: Can you see that from where you're sitting?

11 A Yes.

12 Q Okay. The first sentence reads, please return your load
13 and your truck safely immediately to your home domicile. The
14 second sentence reads, contact your supervisor immediately to
15 inform them of any further care needed for your truck and/or
16 load, et cetera. Who would the supervisor of these truck
17 drivers be on August 11th, for purposes of your operation?

18 A Well, the Duwamish drivers would -- I would be their
19 supervisor. Robert Burens would be the supervisor for Kenmore
20 drivers. And again, I don't remember who was the supervisor in
21 Snoqualmie.

22 Q Okay. And on August 11th, did any of the drivers who
23 returned to the Duwamish yard contact you immediately, to
24 inform you of any future care needed for their truck?

25 A I got one phone call from a driver. I don't remember who

1 it was. But they called me to tell me they -- they were going
2 on strike and they wanted to know what I wanted them to do.

3 Q And what did you say?

4 A I told them to get in touch with dispatch and find out
5 where they wanted him to take the load.

6 Q Okay. You say -- you said you got one call and yet you
7 were -- used the word them. Who called you?

8 A I -- I don't remember.

9 Q Okay. Was it more than one person on the line?

10 A No.

11 Q And what did that person ask?

12 A The driver asked --

13 MS. CHEREM: Asked and answered. He just testified to
14 this.

15 JUDGE WEDEKIND: That's okay.

16 Go ahead.

17 A The driver asked me -- or informed me that they -- they,
18 the Union, was going on strike. And asked me what I wanted him
19 to do with his load.

20 Q And what did you tell him?

21 A I told him to call dispatch and find out from them, where
22 they wanted him to take the load.

23 Q Was that the end of the conversation?

24 A Yes.

25 Q Okay. Any other calls that morning?

1 A No.

2 Q Okay.

3 JUDGE WEDEKIND: This was on the phone?

4 THE WITNESS: This was on the phone. I was driving. I
5 don't know where the driver was.

6 Q BY MR. PAYNE: So how big was that bargaining unit at that
7 point in time, the 174 Bargaining Unit?

8 A I believe there were around 80 drivers total, between all
9 three plants.

10 Q And how many in Duwamish? Approximately?

11 A 60, 65.

12 Q And you got one phone call that morning, from a driver?

13 MR. BERGER: Objection. Asked and answered.

14 JUDGE WEDEKIND: Overruled.

15 A Yes, I got one phone call.

16 MR. PAYNE: No further questions.

17 JUDGE WEDEKIND: Okay. Any further cross?

18 MS. CHEREM: Yeah.

19 Give me just a second.

20 JUDGE WEDEKIND: Let's go off the record.

21 (Off the record at 9:38 a.m.)

22 MS. CHEREM: I just had a few questions of clarification.

23 **RECROSS-EXAMINATION**

24 Q BY MS. CHEREM: Can you remind me who Bob Nordness and
25 Scott Folwell were -- or are?

1 A Bob Nordness was the plant superintendent in Bremerton.
2 And Scott Folwell, was the plant superintendent out at Dupont
3 in Tumwater, at the time.

4 Q And just for the record, those are both in Washington?

5 A Yes, they're both in Washington. I'm sorry.

6 Q Not too far away from the greater Puget Sound area,
7 relatively speaking?

8 A Yes.

9 Q And you said, they were there on Monday, Tuesday, and
10 Wednesday of the week following the strike?

11 A Yes.

12 Q Okay. But not on the Friday, right?

13 A I -- I don't remember seeing either of them on Friday.

14 Q Okay. You mentioned Scott Nicholson, can you remind me
15 who he is? Or was at the time of the strike.

16 A At the time of the strike, he was the general manager of
17 aggregates.

18 Q Okay.

19 A Sand and rock. So there's a ready-mix division and the
20 sand and rock aggregate division. He was Justin Denison's
21 counterpart on the aggregate side.

22 Q Okay. So can you -- I do remember what aggregates are,
23 but can you just re-explain to me what his role was and who he
24 would have been overseeing?

25 A So he would have been overseeing any mining operations --

1 sand and gravel mining operations, and the sales on the
2 aggregate side and general operations for any of the aggregate
3 sites, both mining and retail yards, in Washington.

4 Q Okay. And where was he based?

5 A His office was based in Seattle at the time.

6 Q At the Duwamish plant?

7 A Yes, ma'am.

8 Q Did Duwamish also have aggregate -- like an aggregate
9 portion, or no? I just don't recall.

10 A There was an aggregate yard on West Marginal. It was
11 north of where we park the ready-mix trucks.

12 Q Got it. But not -- but not that immediate, same facility?

13 A No, it was not the same facility.

14 Q Thank you. You testified about Melanie issuing other
15 discipline. Is the -- can you think of any other instances
16 beyond the -- the circumstance that you were describing about
17 the driver hitting the pedestrian in the crosswalk?

18 A I can't think of any. I don't remember any.

19 Q Okay.

20 A But she had more responsibility than I did, so --

21 Q Sure. Just your knowledge.

22 A Yeah. I don't remember any other than that one.

23 Q Okay. Okay. And same thing, your knowledge and
24 recollection on how many times Justin got involved with a
25 discipline?

1 MR. PAYNE: Objection. The word involved is vague, Your
2 Honor.

3 Q BY MS. CHEREM: Or Justin issued discipline?

4 A I can remember a handful but -- it was more than Melanie
5 but it wasn't you know, it wasn't obviously, an everyday thing.

6 Q When you say a handful, is that like --

7 A Like two or three.

8 Q Okay. And do you remember the circumstances of those?

9 A I only remember the one, specifically.

10 Q And which one -- which one was that? Was that the
11 belligerent on the job site or am I conflating my notes?

12 MR. PAYNE: Your Honor, can he be allowed to answer the
13 question?

14 JUDGE WEDEKIND: Yeah.

15 MS. CHEREM: Yeah. Sorry. Go ahead.

16 JUDGE WEDEKIND: Go ahead.

17 A So we had a driver in Kenmore who had multiple incidents
18 where he was belligerent with coworkers, he was belligerent
19 with customers -- he was belligerent with customers, this was
20 all the same driver.

21 Q Okay.

22 A And so Justin issued discipline to him on more than one
23 occasion. And one time he asked me to just be a witness. So I
24 was there for one of those letters.

25 Q Okay. What are your general work hours?

1 MR. PAYNE: Objection, Your Honor. Time frame.

2 Q BY MS. CHEREM: In August 2017?

3 A Generally, I worked 8 to 4, 8 to 5.

4 Q What days of the week?

5 A Monday through Friday.

6 Q Okay. And in your absence, who was -- in August 2017, who
7 was the primary point of contact for drivers at the company?

8 A Generally speaking, it was dispatch.

9 Q Okay.

10 MS. CHEREM: No further questions.

11 JUDGE WEDEKIND: How about from the Union?

12 MR. BERGER: I also have a few questions.

13 **CROSS-EXAMINATION**

14 Q BY MR. BERGER: Good morning again, Mr. Nordyke.

15 A Morning.

16 Q Outside of the August 19th 2017 mat pour, are you aware of
17 any other instance where Glacier decided to go forward with the
18 mat pour that would occur 24 hours or sooner?

19 A Not that I'm aware of.

20 Q Are you aware of another pour where Glacier announced to
21 drivers that a mat pour would occur within the next 24 hours?

22 A Not that I'm aware of.

23 Q I think you mentioned yesterday, you spoke to Dave Boshart
24 on the picket line at some point; is that right?

25 A Yes.

1 Q Okay. Did you speak to any other drivers about any
2 matters relating to August 11th in the ensuing days while you
3 were conducting the investigation on the picket line?

4 A No. I would say, hi and just ask how they were doing.
5 But I didn't talk to them specifically, about events on August
6 11th. I only asked Dave if he knew where his ticket was.

7 Q Do you have personal knowledge if Justin Denison spoke to
8 any drivers before issuing disciplinary letters connected with
9 the August 11th events?

10 A I don't know.

11 Q Do you have personal knowledge if Melanie O'Regan spoke to
12 any drivers before issuing discipline for August 11th?

13 A I -- I don't know.

14 Q In providing you direction about putting together your
15 spreadsheet, did Mr. Denison ask you to indicate whether a
16 driver had contacted you for instructions?

17 A He did not.

18 MR. BERGER: I have no further questions.

19 JUDGE WEDEKIND: Any redirect?

20 MR. PAYNE: None, Your Honor.

21 JUDGE WEDEKIND: All right. Thank you, very much.

22 THE WITNESS: I'm done?

23 JUDGE WEDEKIND: You're done.

24 MS. CHEREM: You can do a happy dance, it's okay.

25 MR. LUNDGREN: Your Honor, if we can have five minutes, I



1 need a restroom. Then I'm going to grab the next witness.

2 JUDGE WEDEKIND: Okay. Thank you. Off the record.

3 (Off the record at 9:47 a.m.)

4 JUDGE WEDEKIND: All right Respondent, would you call your
5 next witness?

6 MR. LUNDGREN: We call -- Respondent calls Dirck Armitage.

7 JUDGE WEDEKIND: Thank you.

8 Mr. Armitage, can you state your name for the record and
9 spell it?

10 MR. ARMITAGE: Dirk Armitage, D-I-R-C-K A-R-M-I-T-A-G-E.

11 JUDGE WEDEKIND: All right. Thank you, very much. Can
12 you raise your right hand and I'll swear you in?

13 Whereupon,

14 **DIRCK ARMITAGE**

15 having been duly sworn, was called as a witness herein and was
16 examined and testified as follows:

17 JUDGE WEDEKIND: Okay. Thank you very much.

18 Counsel?

19 **DIRECT EXAMINATION**

20 Q BY MR. LUNDGREN: Mr. Armitage, where are you employed?

21 A At the Seattle branch of CalPortland.

22 Q And we've heard the term, Glacier Northwest in this
23 hearing. Can you explain?

24 A Yeah, we operate under that -- under that name as well in
25 the state of Washington. So yes, I work for Glacier.



1 Q And how long have you worked for Glacier?

2 A Since February of 2000.

3 Q What positions have you held at Glacier?

4 A Originally, I was hired as a ready-mix driver. And then
5 shortly after that, I think I did that for about two years and
6 then I went into dispatch.

7 Q When were you a ready-mixed driver?

8 A In February of 2000 to about sometime in late 2001 or
9 2002, somewhere right around in there.

10 Q And then when were you a dispatcher for Glacier?

11 A So it would have been, I think, sometime around 2002 --
12 maybe 2003; I don't -- I don't recall. Because there was a
13 time where I couldn't drive anymore because I had an L&I
14 injury. And so there was maybe a six, maybe a nine-month gap
15 between the time that I drove and the time that I was taken
16 inside to be a dispatcher, so --

17 Q And since -- since the time you ceased being a mixer
18 driver for Glacier, what positions have you held?

19 A Dispatcher.

20 Q What union, if any, did you belong to when you were a
21 driver?

22 A Local 174 Teamsters.

23 Q What truck driving experience, if any, did you have prior
24 to working for Glacier?

25 A Oh, back in the early nineties, I worked for a company

1 called Henry Bacon delivering lumber products. And then after
2 that, I work for Airborne Express. And then I start --

3 Q And how long did you work for Airborne Express?

4 MS. CHEREM: Objection. Relevance.

5 JUDGE WEDEKIND: Overruled.

6 A Approximately five years, maybe.

7 Q BY MR. LUNDGREN: Any union affiliation in those jobs?

8 A Yeah. Airborne Express was part of Local 174.

9 MS. CHEREM: Objection. Relevance.

10 JUDGE WEDEKIND: What's that?

11 MS. CHEREM: I objected on relevance grounds as to his
12 union affiliation and prior employment.

13 MR. LUNDGREN: It's background.

14 JUDGE WEDEKIND: Yeah. It's just background. It's fine.
15 Overruled.

16 Q BY MR. LUNDGREN: And what is your education?

17 A I have a BFA from Temple University.

18 Q And I want to ask you questions about Seattle dispatch in
19 August 2017 and the -- the years leading up to that. What
20 facilities does your office dispatch for -- what Glacier
21 facilities?

22 A Well, we've got the Seattle Duwamish location, we have
23 Kenmore, we've got the Snoqualmie location, and then we have a
24 Tacoma and also a DuPont location.

25 Q And at what -- who do you dispatch?

1 A Who do I dispatch?

2 Q Who does your -- who does the dispatch office dispatch?

3 A All of those locations.

4 Q And are there persons that are dispatched from those
5 locations?

6 A If I understand your question, are you asking me if all of
7 us dispatch?

8 Q No, I think it's because it's obvious. But let me ask it
9 again. When you dispatch you -- what is dispatch?

10 A Well, we're -- dispatch is basically managing where the
11 trucks -- which trucks go to which jobs, I mean, basically.

12 Q Right. And the -- the trucks that you're dispatching are
13 which trucks?

14 A Well, they would be the trucks that are located in the
15 Duwamish facility, as well as the Kenmore facility, as well as
16 the Snoqualmie facility, the Tacoma facility, and the DuPont
17 facility.

18 Q Sure.

19 A So we're central dispatch. We dispatch all of those
20 trucks.

21 Q Right. And what -- what -- what duties -- what -- what do
22 those trucks deliver?

23 A Ready-mix concrete and some other products like expansion
24 joints, primarily. You know, primarily ready-mix concrete
25 and --

1 Q And who -- who operates those trucks?

2 A The -- the drivers, you know, in this -- in the King
3 County area, it's the drivers that are a part of Local 174.
4 And then the Tacoma DuPont drivers are part of a different
5 union. I don't remember the union name for that one, but --
6 the Local for that. But they're all union drivers.

7 Q And what are your dispatcher duties?

8 A Well, we take orders from customers, schedule them. We
9 create schedules for when the drivers would be assigned work.
10 And then we obviously manage the dispatching of the trucks to
11 the various jobs that are going on, on any given day.

12 Q What is the process for -- for dispatching a mixer truck?
13 Can you generally describe that for us?

14 A Well, the actual dispatching of the truck involves
15 assigning a particular dri -- driver to go to a particular job,
16 and we create a ticket electronically, which is sent to the
17 batch panel that the driver will pull under the plant, get
18 loaded, and then proceed to the job.

19 Q How does the driver know which job or customer is entitled
20 to receive that concrete?

21 A Well, two ways. Now, we have electronic tablets. And so
22 his -- the order will show up on his tablet. But once he pulls
23 under the plant to get batched, a ticket will come down through
24 a -- through a tube and that will also have the information in
25 terms of where he's supposed to take the load.

1 Q Where was your office? What -- the office you worked out
2 of in August of 2017?

3 A It was the Seattle Duwamish facility.

4 MR. LUNDGREN: Ross, could you put up Respondent Exhibit
5 3?

6 Q BY MR. LUNDGREN: If you don't mind, Dirck, you can use
7 that ruler there. Could you step down and just point which --
8 which of those buildings in that -- in the photo that's marked
9 as Respondent Exhibit 3 was your office location?

10 A So, let me read this correctly here. So my office would
11 have been -- the dispatch office is located right here.

12 Q And you're pointing at the --

13 A D.

14 Q -- the D?

15 A Yeah. D.

16 Q The yellow D on Respondent Exhibit 3?

17 A Uh-huh.

18 MR. LUNDGREN: And that's all I need with the photo..

19 Q BY MR. LUNDGREN: What floor of the building is the
20 dispatch office on?

21 A On the second floor.

22 Q In August of 2017, what shift did you work?

23 A I believe I was working 9 to 5 on that day.

24 Q When you say that day, do you mean that month?

25 A Well, you asked me about August 17th, so --

1 Q August 2017. I think you misheard me.

2 A Oh.

3 Q In August of 2017, what was your typical shift?

4 A Oh, yeah, it was 9 to 5, yes.

5 Q How many dispatchers worked at the Seattle Central
6 Dispatch with you in August 2017?

7 A So the ones I can remember would have been Andrea
8 Moore (phonetic), there was Shawn Jagnow, there was Jessica
9 Barkie, myself, Dave Hayes, and I believe Kevin Kline
10 (phonetic) was there then. And our manager would have been
11 Adam Doyle.

12 Q What location did those other dispatchers work out of?

13 A The exact same office.

14 Q How did dispatch communicate with the drivers in August
15 2017?

16 A Primarily through the radio.

17 Q And can you describe the radio for us?

18 A It's a two-way radio. Each truck has a -- a radio in it.
19 And so you know, we would key up the mic. They could hear it.
20 Any other driver that was tuned in to that particular channel,
21 could also hear the same communication.

22 Q And there's been some -- I'll represent, there's been some
23 testimony about a GPS-related system in dispatch. Do you know
24 what I'm talking about?

25 A Yeah, it's part of our proprietary software, called Truck



1 Tracks (phonetic). And you can sort of track the location of
2 trucks using that GPS system -- if it's functioning on any
3 given truck.

4 Q Is this a system that you have familiarity with in the
5 course of your duties?

6 A Yeah.

7 Q Was that system present in August 2017? Do you know?

8 A I believe it was. Yeah. Yeah. Oh, August '17? Yes,
9 Yes, it would have been. Sure. Yeah.

10 Q Sure. August 2017. The month of August.

11 A That's what I mean. Yes. Yeah, it would have been
12 functioning then.

13 Q Okay.

14 A Yeah.

15 Q And what -- how does dispatch typically make use of that
16 system in August 2017?

17 A You know, primarily what it tells us is, the location and
18 the status of a truck. So we can tell whether a truck is on
19 the way to a job, whether it is returning from a job, we can
20 tell if it's pouring or not. And like I said, it all depends
21 on, you know, if it's -- if it's functioning correctly, it'll
22 tell us, you know, whether it's -- the -- between the GPS and
23 the software, it'll tell us the different states it's in, you
24 know, is it getting loaded? Is it -- has it been ticketed?
25 Has it arrived to the job? So between the actual GPS and the

1 software, that's what it'll tell us.

2 Q When a -- when a truck is returning, would that GPS system
3 tell you if it had concrete on the truck?

4 A No, for that, we rely on the drivers. They will -- they
5 should tell us when they come back with either a full load or a
6 partial it.

7 Q Would it tell -- would the GPS system tell you the status
8 of that concrete?

9 A No.

10 Q How many drivers would each dispatcher be monitoring on
11 his or her screen during a given typical day?

12 A I mean, in total, if you -- if you -- you know, add up all
13 of the plants, I mean, it's upwards of a hundred drivers. I
14 don't know the exact number.

15 Q When the dispatchers are engaged in the dispatching task,
16 like in August 2017, are they actually tracking every truck?

17 A No. I mean, we use it when we need it. You know, I mean,
18 we've got to juggle a lot of different duties when you
19 dispatch. You know, I mean, you try to make sure that you're
20 you know, ticketing trucks, getting them under the plant.
21 Sometimes we have to communicate with drivers and usually we'll
22 have a screen up and I think most of us will use it when we
23 have a question about a particular truck, like where is he?
24 How close is he to the job? Sometimes we get requests from
25 customers asking, you know, how far is my load? So we'll use

1 it like that. We're not just constantly looking at the thing.

2 Q What was the reliability of that system in August of 2017?

3 A Was fairly reliable. You know, I mean, there are times
4 when some trucks do not track at all, but it's a fairly
5 reliable system.

6 Q And is there some way to view the trucks on a map in that
7 system?

8 A Well, yeah. I mean, that's what that's exactly what it
9 shows them. It'll -- each truck will be represented by an
10 arrow. And the status of that truck, in terms of whether it's
11 going to the job or coming back or what state it's in, is
12 determined by the color of that arrow. So the system will
13 change the color of that arrow. And that's how we know, you
14 know, basically, is it going to a job or is it returning from
15 the job? Things like that. And it is shown on a -- it's shown
16 on a map, which I believe is a Google map. I'm not sure.

17 Q And let's say you had, you know, 50 trucks at one job
18 site. What would that look like? Would it be a series of
19 arrows? Describe that for us.

20 A Well, I mean, you could -- you could zoom in on that area
21 to get a better view of each one of those trucks. And so if
22 you zoomed in enough, you could -- you could see if -- if each
23 truck was actually functioning, if the GPS was working for that
24 truck, you would be able to see that that truck is actually on
25 site.

1 Now, sometimes they'll go offline and all that you'll see
2 is a little square box. If they're not statusing properly,
3 that's all you'll get is like a little stick square box. But
4 yeah, generally, you can zoom in and you can theoretically --
5 well, not theoretically, you could zoom in and if they were
6 function -- if it was functioning correctly, you would be able
7 to see which trucks were in that area.

8 Q And did it always function correctly?

9 A No. I mean, it's like anything else man creates.

10 Q And what about in August 2017?

11 A You know, like I said, it is fairly reliable, you know.

12 Q And then so the -- let's say you had 50 trucks parked in
13 the Duwamish yard, would you -- what would that look like on
14 your screen?

15 A If they were statusing, you'd -- you'd be able to, you
16 know, like I said, kind of pinch and zoom in and see that they
17 were there. Wouldn't tell you much more than that. Just tell
18 their -- the location, basically.

19 Q Let's go back to the two-way radio for a moment. What is
20 that -- what's the primary use of that radio?

21 A To communicate with the drivers. That is the absolute
22 primary use of it.

23 Q And are drivers able to use that radio to communicate?

24 A Yes, both with us and with each other.

25 Q And when drivers communicate over the radio, who hears

1 those communications?

2 A Anyone who is tuned in to that channel.

3 Q And when dispatch communicates over that radio, who hears
4 dispatch's communication?

5 A Again, if -- we're tuned into that channel up in the room.
6 So anyone in our room within earshot of that could hear it.
7 And then anyone else, any other driver that was tuned into to
8 do that channel could hear that communication.

9 Q How frequently did dispatchers communicate with drivers
10 over the radio in August 2017?

11 A All the time. I mean, they'll use it to help each
12 other out in terms of things that they may need to know about a
13 job they're going to or traffic conditions.

14 Q And how frequently did drivers communicate with one
15 another over the radio on August 2017?

16 A It's done every day, all throughout the day.

17 Q How did dispatch talk to customers in August 2017?

18 A Primarily through the phone. Every once in a while we'll
19 get some emails from them, but we make it a point to primarily
20 communicate with them over the phone because it's a recorded
21 system.

22 Q And how did dispatch talk to the batch plant in August
23 2017?

24 A We can pick up the phone and call them. In the Seattle
25 location, we can just -- we can actually walk into the batch

1 office and talk to them if we need to.

2 Q Now, I'll represent to you there's been testimony about a
3 King County Teamsters strike that started on August 11th, 2017.
4 Where were you on August 11, 2017?

5 A I was in Yosemite National Park.

6 Q And why were you in Yosemite National Park?

7 A Because it's one of my favorite places.

8 Q Were you working that day?

9 A No, I was on vacation.

10 Q Where were you on Friday, August 18, 2017?

11 A I was back -- well, the 18th was that -- was that Friday,
12 right?

13 Q Friday.

14 A Okay. I was back at work by then -- in the Seattle
15 location.

16 Q And who did you report to in August 2017?

17 A Adam Doyle.

18 Q Do you recall what duties you were performing on August
19 18, 2017?

20 A Well, there were still some plants that were still
21 functioning. Tacoma, DuPont were still delivering concrete.
22 So dispatching those plants and we were taking orders and
23 scheduling orders for customers.

24 Q What happened, if anything, about the scheduling of a mat
25 pour in King County on August 18th? Do you have any

1 recollection of that?

2 A I do have a rough reflection of us scheduling a mat pour
3 for the next -- for Saturday, the following day.

4 Q And can you generally describe that -- that dispatching
5 for us?

6 A Well, so basically, when we heard that the contract had
7 been ratified, we started making up a schedule to assign
8 drivers their times. And then we proceeded to call all of
9 those drivers and attempt to give them their start times for
10 Saturday.

11 Q What else did you do to assign start times?

12 A So after that process was done, which we did twice. We
13 put the start times on the callout recording, so that each
14 driver could also check that recording.

15 Q And what is the callout recording?

16 A So it's a -- it's a dial-in number that the drivers can
17 call and it will assign them their start times.

18 Q And how does it assign their start times?

19 A I mean, we basically tell them, you know, what plant they
20 would be working out of if we need to. You know, we tell them,
21 you know, we call out their name and tell them what their start
22 time will be, and then we proceed on to the next person. And
23 we do that basically from the top of the seniority list to the
24 bottom.

25 Q And was that practice you just described for August 18th



1 consistent, if at all, with the prior practices for scheduling
2 a mat pour on Saturday?

3 A Yeah, I mean we -- we -- we do it the same way each time,
4 but in terms of when it gets done, that depends on basically,
5 us knowing for sure that a pour is going to happen the next
6 day. So once that is done -- once a pour has been confirmed,
7 then we can go about the process of making up a schedule. And
8 then once that schedule has been made, then we start -- we
9 typically will reach out to the drivers by phone.

10 Nowadays, we have the ability to also send them messages
11 on the tablets, which we didn't have back then, to my
12 knowledge. And then we -- and then we will post the start
13 times. Usually, we'll -- usually when we call them personally,
14 or leave a message for them, will ask them to also double check
15 the -- the calling recording just to see if anything's changed.

16 Q What do you mean if anything's changed, what would change?

17 A Well, you know, sometimes later on in the day, the
18 customer will call and request a change to his order. Maybe he
19 wants to move it earlier. Maybe he wants to move it back.
20 Maybe he doesn't need as many yards. So therefore, we don't
21 need as many drivers. So there's things that can change and
22 those changes would be represented on the callout recording.

23 Q So how would those changes affect driver's start time at
24 all?

25 A It could change their time.

1 Q And then if it changed their time, what would you do?

2 A We would make the change on the recording and we would
3 expect them to listen to it and expect them to show up at the
4 time, you know, the change was reflected.

5 Q And when is this callout recording typically posted for a
6 Saturday mat pour?

7 A You know, we try to get on there as early as possible. We
8 definitely try to get it on there you know, by 5:00. We prefer
9 to get it on there earlier, if we can. So on a mat pour, you
10 know, we -- we understand that the drivers, you know, they
11 need -- they need time to rest, they need time to go to sleep.
12 So we -- we try to put it on, you know, as soon as we are done
13 with the process of scheduling and reaching out to them on the
14 phones.

15 Q And what do you understand to be the deadline of when you
16 need to have that callout recording posted?

17 MR. BERGER: Objection. Calls for legal conclusion.

18 JUDGE WEDEKIND: Overruled.

19 A I mean, my understanding is, is it's got to be posted
20 before 5:00, typically.

21 Q BY MR. LUNDGREN: And when do you usually post the callout
22 recording? Typically, in August 2017 or before?

23 A Well, you know, like I said, on the weekdays, we typically
24 post it before 5:00. And if there's -- and on Saturdays, we
25 typically post it, you know, before 5:00. If it's a mat pour,

1 like I said, we will try to put it on there earlier. Just --
2 just out of courtesy to the drivers.

3 Q And when you say earlier than that, what do you mean?

4 A You know, it could be posted as early as, you know, 2:00,
5 1:00, 3:00, whenever, you know, we could get the whole process
6 done. Because like I said, you know, these -- the drivers,
7 they -- they've got to get their rest and things like that, so.

8 Q And who was dispatching on August 18, 2017, do you know?

9 A Who was actually doing the dispatching?

10 Q Who was in the dispatch office?

11 A Who is in the dispatch office? Okay. Well, like I said,
12 it would've been Andrea Moore, Shawn Jagnow, I believe Kevin
13 Kline. I'm fuzzy on that one. Definitely Dave Hayes, myself
14 and Jessica Barkie.

15 Q What about from management? Was -- was anybody --

16 A Adam Doyle was there. I did see Melanie O'Regan for part
17 of the day. I'm not sure who else I saw. I mean, I would have
18 seen, you know, people like Dave Siemering, on and off, but I
19 don't remember who else.

20 Q What part of the day did you see Melanie O'Regan, if you
21 know?

22 A She was there when word came through. In fact, I think
23 she was the one that told us for sure that the contract had
24 been ratified. So you know, 11:00-ish, something like that,
25 maybe.

1 Q How certain are you about exactly when that happened?

2 A I'm not.

3 Q So let's talk more about this process for assigning start
4 times to drivers, in August 2017. If you have weekday work,
5 say work on a Tuesday, when would you assign the start time for
6 that Tuesday work?

7 A So we would make the schedule Monday and it would be
8 posted on the callout Monday night before 5 p.m. During the
9 weekday, we do not reach out to each driver and tell them, hey,
10 you're going to have work tomorrow. They all understand that
11 they will get their start times posted on the phone report and
12 they're expected to check that.

13 Now, when Tuesday rolls around, if not all the drivers
14 have been called in and we still need some of them, that is
15 when we reach out to them by phone, in the morning. And they
16 are expected to make themselves available until 9 a.m., to --
17 to answer the phones -- their phones.

18 Q And then for work on -- when are mat pours typically
19 conducted, do you know?

20 A You know, typically they're done in the early A.M. hours.
21 And a lot of times they are done on Saturday, just because of
22 traffic, you know, conditions and things like that.

23 Q And so if you have weekend work, let's say early morning
24 Saturday, when would you post the start time recording?

25 A Well, we would post the start times on Friday, the day

1 before.

2 Q And when would you make the calls to the drivers?

3 A Before we post them. As soon as the schedule is done, is
4 when we start the process of trying to reach out to each
5 individual driver.

6 Q Same days?

7 A So we --

8 Q Fridays?

9 A -- we reach out to them Friday.

10 Q So the schedule you've been talking about, how long does
11 that take to create?

12 A It depends. It can take you know, it can take an hour.
13 If it -- if things are complicated, you know, I mean, you've
14 got -- you might have drivers that are coming from these
15 outlying plants that need to come into Seattle to get loaded,
16 or maybe they're loading from those outlying plants and
17 because -- because you've got to assign drivers basically
18 time -- their time -- start time based on seniority, some of
19 that takes a little bit of figuring out. So you know, it could
20 take an hour maybe to do that.

21 Q And for a mat pour, how long would it take to create a
22 schedule?

23 A That's what I mean. It could -- it could take like an
24 hour for a mat pour.

25 Q And when do you perform -- when do you create that



1 schedule?

2 A As soon as I know that the customer has firmed up their
3 order and they have committed to going and they've got the
4 yardage and the mix and everything they need, as soon as we
5 have all that information for them and we've got a commitment
6 for them, we would start making that schedule on a Friday.

7 Now, if they had told us ahead of time, like we're
8 definitely going to pour, you know, on Saturday, we don't make
9 the schedule a day earlier, we're not going to make it on
10 Thursday or on a Wednesday. It's always made on a Friday.

11 Q Why is that?

12 A Because things can change, you know, that -- we touch base
13 with them one last time on a Friday just to make sure nothing
14 has changed.

15 Q And when you make the schedule on Friday, and then
16 you're -- you move to assign the start times, can things still
17 change?

18 A Yeah.

19 Q What do you do when that happens?

20 A Well, then we've got to start the whole process all over
21 again. If we've already talked to the drivers, and it's simply
22 a matter of their start time changing, we may not, you know,
23 try to recall them again. As I said, when we talk to them, we
24 ask them to check the callout schedule, which will reflect any
25 changes. So typically that's -- that's all that we need to do

1 in.

2 Q In the course of your duties, in August 2017, did you have
3 communications with drivers about start times?

4 A Yeah.

5 Q And this process you've been describing for us, is this a
6 process the Teamster Local 174 drivers understood?

7 MR. BERGER: Objection. Calls for speculation.

8 THE WITNESS: Well, he's right about that. But I -- yeah,
9 I think they understand it. They tend to show up.

10 Q BY MR. LUNDGREN: In your experience in dealing with --
11 let me rephrase it.

12 JUDGE WEDEKIND: Okay. Hold on a second. Hold on a
13 second.

14 Q BY MR. LUNDGREN: In your experience --

15 JUDGE WEDEKIND: If there's an objection --

16 MR. LUNDGREN: Okay. Let me let me rephrase.

17 Q BY MR. LUNDGREN: In your experience in dealing with the
18 Teamster drivers, do they know to call this callout recording
19 to get their start time?

20 JUDGE WEDEKIND: So repeat the question again.

21 MS. CHEREM: Sure.

22 JUDGE WEDEKIND: In your experience --

23 Q BY MR. LUNDGREN: In assigning start times to drivers, do
24 the Teamster drivers know to use this callout recording process
25 to get their start times?

1 JUDGE WEDEKIND: Overruled. Do they -- based on your
2 experience, do they know they're supposed to use the call in?

3 THE WITNESS: Yes.

4 JUDGE WEDEKIND: Can I ask a clarification question, real
5 quick? Okay?

6 MR. LUNDGREN: Sure.

7 JUDGE WEDEKIND: So I want to make sure I understand the
8 weekend work. Do you ever have weekend work that's not a mat
9 pour?

10 THE WITNESS: Oh, all the time. Sure.

11 JUDGE WEDEKIND: Right. So when it's not a mat pour for
12 Saturday work, is it the same process as weekday work?

13 THE WITNESS: No. Weekday work, we have the ability to
14 call the driver, say, the next morning. So we don't -- even if
15 we knew we needed everybody the next day, we may stop short of
16 calling everybody in. And there's reasons for that because
17 again, things can change.

18 So our team will get there typically, at 5 in the morning,
19 right? And so a lot of times we will only go down to about
20 7:00, you know, in terms of calling in drivers in. Because we
21 know that we can get there at 5 a.m. and if this customer who
22 had a job that we're supposed to be showing up at 8:00, he
23 decides that he's going to cancel maybe it was raining or
24 something. I haven't called in all the rest of these guys. So
25 they're not just sitting around getting paid for nothing. I

1 can still, at 5 a.m. start calling them individually on the
2 phone.

3 As I said before, they have to make themselves available
4 to 9 a.m. So we can call them in, give them time to get to
5 work and still get to the job. So that's a major difference
6 with the way weekday work is handled from Saturday work.
7 Because Saturday work is not a typical workday, we need to
8 inform the drivers ahead of time that they will be required to
9 work on a Saturday. And they are all given their start times
10 on that Friday by 5 a.m. (sic).

11 JUDGE WEDEKIND: And then if it's not a mat pour --

12 THE WITNESS: The same -- the same -- I'm sorry.

13 JUDGE WEDEKIND: If it's not a mat pour, do you reach out
14 and call them directly for the Saturday work as well?

15 THE WITNESS: We do try to do that. Yeah. We want to
16 make sure that they know to check that start time because
17 again, some of them will volunteer. Others are being forced.
18 In -- in each case though, we do try to, you know, let them
19 know, listen, I know you volunteered, here's your start time,
20 check the recording tonight. Or we'll tell the driver, listen,
21 you're being forced in. This is what your start time is going
22 to be. Please check the tape tonight to see if there's any
23 changes.

24 JUDGE WEDEKIND: Okay. Thank you.

25 Q BY MR. LUNDGREN: If you have work beginning after -- in

1 the nighttime, after midnight, so early Saturday morning, is
2 that Saturday work or Friday work?

3 A If it's beginning after midnight, it's Saturday work.

4 Q And would there be any obligation to call a driver -- to
5 assign a start time to a driver before 9 a.m. on Friday
6 morning?

7 MR. BERGER: Objection.

8 MS. CHEREM: Objection. Calls for a legal conclusion.

9 MR. BERGER: Same.

10 JUDGE WEDEKIND: Is there any obligation -- say it again?

11 MR. LUNDGREN: I can rephrase it without using the word
12 obligation.

13 JUDGE WEDEKIND: Okay. Okay.

14 Q BY MR. LUNDGREN: But is there anything in the process
15 that requires you to call the driver before 9 a.m. on Friday
16 morning to assign a Saturday start time?

17 A No, there's nothing in the process that would require me
18 to. In fact, it would be very difficult to do that because a
19 lot of times, like I said, the customers have not made their
20 final decision yet. If there's any changes or you know,
21 whether they're going to commit to the pour or not. We
22 typically don't know that until Friday morning.

23 Q What about drivers being given ten-hours' notice prior to
24 the assigned start time on it? And we're talking about August
25 18, 2017. Was that something you did as part of your process?

1 A It wasn't -- it was not a requirement that I was aware of.
2 I know that there's a requirement in federal law, says that
3 they have to have ten hours off between shifts. But I was not
4 aware of any requirement to give them a ten-hour notice.

5 Q Was the -- you mentioned a requirement of ten hours off
6 between shifts, was that an issue for you in -- in assigning
7 start times for the August 19 mat pour?

8 A It wasn't an issue because they hadn't worked. They were
9 on strike. So there was no ten-hour shifts they had worked
10 before then.

11 Q In dispatch, has any driver ever complained to you about
12 not receiving ten hours advanced notice of a start time?

13 A Yes, it happened recently. In fact, that was the only
14 time I became aware of this. I believe was Dean Valenta came
15 up to tell Kevin that we need to give them ten hours off. And
16 I kind of perked up my ears because I was not aware of that
17 rule until I heard it from Dean.

18 MS. CHEREM: Your Honor, can we get a time frame? He said
19 it was just recently.

20 MR. LUNDGREN: Well, I'm going to ask him.

21 MS. CHEREM: Okay.

22 A Within the last couple of months. I don't remember --

23 Q BY MR. LUNDGREN: Yeah, when did that happen?

24 A Within the last couple of months.

25 Q Okay. And prior to that?

1 A I had no knowledge of that.

2 Q Can you explain the process -- and I understand the
3 drivers -- this didn't apply to the August 18 scheduling for
4 the 19 mat pour in your mind, but can you explain the dispatch
5 process for making sure drivers have ten hours off between
6 shifts?

7 A So we try to obviously, get them off the clock the day
8 before to make sure that they're going to have ten hours off
9 between shifts. Now, if for some reason they get stuck on a
10 job because of just extenuating circumstances, then it is
11 understood that they know they should not clock in until
12 they've had their full ten hours. Regardless of whether they
13 have given a start time that is prior to that. They know to
14 ignore that and to just wait the full ten hours before they
15 clock in.

16 Q How many drivers, if any, reported a ten-hour DOT
17 scheduling issue to dispatch on August 18th, 2017?

18 A You mean, during that month, did anyone --

19 Q No. On the Friday when you were -- Friday, August 18th,
20 when you were scheduling the mat pour August 19th?

21 A No one brought up the ten-hour issue to me.

22 Q If such an issue had been raised, would you have heard
23 about it?

24 MS. CHEREM: Objection.

25 MR. BERGER: Objection. Calls for speculation.



1 JUDGE WEDEKIND: Sustained.

2 Q BY MR. LUNDGREN: In the course of your duties, if a
3 driver raises an issue with a DOT ten-hour rule and you're
4 engaged in the dispatching of the start times, is that
5 information that would be brought to your attention?

6 A It would have been brought to the attention of someone in
7 the dispatch office so that the dispatcher for the following
8 day would know that such a person may not show up on it -- at
9 the time he was assigned.

10 Q When you say show up at the time he was assigned, what do
11 you mean?

12 A So again, let's say that driver was assigned a specific
13 start time, but because of extenuating circumstances, he didn't
14 have his ten hours off. We would like the dispatcher who is
15 going to have to deal with that to know that this driver is not
16 going to show up. He's not going to clock in by then. He
17 would clock in after ten hours has been expired. So someone
18 would have been made aware of it in the office so that we could
19 pass that information.

20 Q Have you seen that happen before?

21 A Yeah, sure.

22 Q What about asking for volunteers when you schedule a mat
23 pour for Saturday morning? You mentioned that earlier. Can
24 you explain that process?

25 A Well, I mean, obviously, we want people who want to work,



1 who choose to work, not to -- not people -- I mean, we do force
2 people in, but we would prefer to have volunteers. And those
3 start times would be assigned to people who volunteer first.
4 Depending on a couple of other re -- requirements, you know, do
5 they have available hours?

6 Q When they volunteer, do they volunteer to work a specific
7 start time assignment?

8 A Every once in a while, a driver will say, listen, I want
9 to work a Saturday, but you know -- you know, I don't want to
10 work, you know, late in the day, you know, will I be off by,
11 you know, 1:00? And we'll give them our best guess. And if he
12 says, well, no, never mind, I don't want to do that, you know,
13 just take me off the list. But generally speaking, they know
14 they have to be flexible with -- if they volunteer, they -- you
15 know, they know that we may not know until the last minute what
16 their start times are going to be.

17 Q Okay. And how, if at all does -- does this asking for
18 volunteers happen if -- if every available driver is being
19 assigned a shift?

20 A Then it's really a moot point because we're going to call
21 everybody in.

22 Q What do you do at dispatch, if anything, about giving
23 drivers notice of weekend work by noon on Thursday?

24 A So if we know that there's going to be weekend work, we
25 will post an announcement on the callout list that they call

1 throughout the week, that we -- we anticipate weekend work.

2 Q And when you post this saying you anticipate weekend work,
3 are you giving drivers start time assignments for that weekend
4 work?

5 A No, it's just a heads up so that they can, you know,
6 understand that they may be called in for work that weekend.

7 Q On Thursday, August 17, the day before the -- the
8 assignment of the start times for the August 19 mat pour, was
9 weekend work anticipated?

10 A No, because the contract hadn't been ratified. So there
11 was no way to know that we were going to have a mat pour that
12 weekend.

13 Q Have you ever heard of a notice being posted in the
14 driver's room about mat pours?

15 A I believe there have been times that notices like that
16 have been posted. I was never involved with the posting of
17 them and I don't believe I've ever actually seen one. But I
18 believe there have been times that that has been posted.

19 Q Do you have any understanding who might be posting such
20 notices?

21 A I could make some assumptions. I believe maybe -- I don't
22 want to say Brent, because I'm going to have to --

23 MR. NORDYKE: Everyone else has said my name.

24 THE WITNESS: Okay. I just hate to have you come up here
25 again.

1 A I believe Brent has done it in the past.

2 Q BY MR. LUNDGREN: Okay.

3 A Maybe Adam Doyle.

4 Q Is that -- is that a method for assigning the start times
5 to drivers like you've been describing?

6 A No, again, that's just more of a heads up. You know, it's
7 a -- this is a common place where they're coming and going all
8 day. It's just another way of us trying to, you know, give
9 them a heads up out of courtesy so that they know that there's
10 going to be work on Saturday because Saturday is not a typical
11 workday for us.

12 Q On a typical day, how many times do you go to the driver's
13 room?

14 A I never -- I shouldn't say never, but it's a rarity that I
15 would go into the driver's room unless someone asked me
16 specifically, to go in there to get something, maybe some
17 paperwork or something like that.

18 Q What happens when you have a weekend mat pour and the
19 information notice that we've been describing, was not posted
20 in the driver's room?

21 A It really wouldn't matter. That is not something that is
22 sort of standard practice. As I said, that there have been
23 times that it's been done, but it is not done every Saturday.
24 And it's not always done every mat pour, I don't even think.

25 JUDGE WEDEKIND: I'm confused about these questions. It

1 doesn't sound like he really knows --

2 MS. CHEREM: Yeah.

3 JUDGE WEDEKIND: -- or has any personal knowledge of these
4 postings. You're talking about -- you asked him about postings
5 in the driver's room.

6 MR. LUNDGREN: Sure. Yeah. My question was -- yeah, I
7 guess I should rephrase it.

8 Q BY MR. LUNDGREN: How would the -- the posting of a notice
9 impact the assignment of start times for when a mat pour --

10 MS. CHEREM: How would he know?

11 JUDGE WEDEKIND: How would he know when he doesn't even
12 know if they're up?

13 MR. LUNDGREN: Because he knows it doesn't impact it
14 because he's the one who assigns the start times. It's not
15 relevant to his process is what he was describing. It has no
16 place in his process of assignments.

17 MS. CHEREM: I think that --

18 JUDGE WEDEKIND: How would he even know that? He doesn't
19 even know if they're up or not.

20 MR. LUNDGREN: Because he's the person who assigns -- the
21 only person who assigns the same start times. His office is
22 the only office that assigns start times to drivers.

23 MS. CHEREM: That's an argument Respondent's free to make
24 a brief, but this witness is clearly --

25 JUDGE WEDEKIND: Yeah. It doesn't --



1 MR. LUNDGREN: If it were a -- if the posting of this
2 notice were a -- were a process in whether he could assign a
3 start time to a driver or not, he would know that.

4 JUDGE WEDEKIND: Well, the drivers -- it might have an
5 impact on the drivers he doesn't know about. I don't -- I
6 don't like the question. He doesn't have any personal
7 knowledge about these postings in the driver's room.

8 MR. LUNDGREN: So the objections sustained?

9 JUDGE WEDEKIND: He would have no idea. Yes. The
10 objections sustained.

11 MR. LUNDGREN: I'll move on.

12 JUDGE WEDEKIND: Thank you.

13 Q BY MR. LUNDGREN: Let's go to Joint Exhibit 6.

14 MS. CHEREM: Do you have a copy in front of you or would
15 you like one?

16 A Yeah, this would be --

17 MR. LUNDGREN: Yeah, that's a good question.

18 JUDGE WEDEKIND: I don't know if I've got a copy.

19 MR. LUNDGREN: What happened to our witness television
20 screen, Ross?

21 MS. CHEREM: Well, someone -- this is my just paper
22 copies.

23 MR. LUNDGREN: And if we don't have a paper copy, sir, you
24 could step down and --

25 MR. MERRITT: We do.

1 MR. LUNDGREN: -- and get closer to the screen.

2 JUDGE WEDEKIND: It sounds like he's going to --

3 MS. CHEREM: It looks like he's got it.

4 MR. MERRITT: Three sets.

5 MR. LUNDGREN: No, I think we just need one.

6 JUDGE WEDEKIND: Just the witness.

7 MR. LUNDGREN: It's my understanding we don't have the
8 already admitted exhibits from the prior week here.

9 May I approach, Your Honor?

10 JUDGE WEDEKIND: Sure.

11 THE WITNESS: Thank you.

12 Q BY MR. LUNDGREN: So I'm showing you what's been marked
13 and admitted as Joint Exhibit 6. And if you could just page
14 through it for a moment, Mr. Armitage. We'll give you a little
15 bit of time.

16 JUDGE WEDEKIND: Looks like he's ready.

17 MR. LUNDGREN: Okay.

18 Q BY MR. LUNDGREN: And I'll represent to you that this is a
19 audio transcribed -- transcription of telephone conversations
20 and messages. Do you recognize the events described in this
21 transaction -- this transcript?

22 A Yes.

23 Q And -- and can you tell us what it is?

24 A Well, it's a transcript -- script of me making calls out
25 to the drivers, informing them that they will be giving -- that

1 they are -- that they are being given a start time. I am also
2 telling them that we are aware that the contract was ratified.
3 There's a part in here where I told each driver that if you
4 fail to report you'll be in violation of the contract. And we
5 asked them to call dispatch back to confirm that they had
6 received these start times.

7 Q All right. And who's making the -- are -- are you one of
8 the -- it says, dispatcher.

9 A Yes.

10 Q Let's just do this.

11 MR. LUNDGREN: Go to page 1122, if you would Ross.

12 MR. MERRITT: Okay.

13 Q BY MR. LUNDGREN: Do you see it where it says,
14 "Dispatcher: Hi, this is a message for Tom Llanos". Do you
15 see that?

16 A I do.

17 Q And do you know who the dispatcher is?

18 A That's me.

19 Q And how do you know it's you?

20 A Because I was the first person to make these calls, and --

21 Q And do you see at the top of page 1122, it says 1:22 p.m.?

22 A I do see that.

23 Q What is your memory of when you made the first call that
24 day?

25 A I would say it -- my memory is -- it is -- it was after

1 1:00 some time that day, so this looks to be accurate to me.

2 Q And do you recall when the mat pour on Saturday the 19th
3 was scheduled to begin?

4 A I believe it was 1:00.

5 Q And do you recall what the start times for the drivers
6 were set to begin?

7 A I mean, we usually call them in about an hour before. So
8 it looks like Tom Llanos, who here -- so in this case it was a
9 half hour before, so this must have meant the job was a little
10 closer. So yeah, they were called in about a half hour before,
11 in this case.

12 Q When you made these calls -- and I'm not going to take you
13 through the entire transcript, Mr. Armitage. But when you made
14 these calls, how many drivers did you speak with?

15 A There were a handful that -- that answered the phone. I
16 don't remember exactly.

17 Q And how many of those drivers told you, I'm not coming to
18 the mat pour?

19 MS. CHEREM: Objection. The -- the document's going to
20 speak for itself. We already have a transcript in the record
21 that was made contemporaneously with these conversations.

22 MR. LUNDGREN: That's a fair objection. I'm fine with
23 that.

24 JUDGE WEDEKIND: Okay. Sustained. You said it was a fair
25 objection.

1 MR. LUNDGREN: Yeah -- that -- I'm fine. I'll strike the
2 question. Yeah, I'm moving on.

3 Q BY MR. LUNDGREN: What happens if drivers do not call
4 dispatch back after you leave them a start time assignment?

5 A Well, I mean, I would -- my expectations? I could tell
6 you what my expectations would be. I would -- my expectations
7 would be that they would show up for work.

8 Q And when you go through this process of -- of giving -- of
9 calling first to give the start time, is that always the final
10 start time?

11 A No. It -- like I said, it could change. And this is why
12 we post the callout list.

13 Q And let's go to page 1170, if you would. I apologize,
14 we're going to back up a couple pages. Give me one moment.
15 Let's go to page 1168 first, please.

16 A Okay.

17 Q And if you'll see around line 15 on page 1168, there's
18 a -- it says, "Dispatcher: Here are your weekend start times
19 for Saturday, August 19th". And then the following paragraph
20 says, "All of the following start times are in the a.m.", and
21 it begins to list drivers. Do you see that?

22 A I do see that.

23 Q What is this?

24 A This is a transcript of me posting the callout list on the
25 phone line.

1 Q And the callout list for what?

2 A Assigning drivers their start times for Saturday, August
3 19th.

4 Q And the 3:42 p.m. indication on the transcript, what is
5 your memory about when you posted these -- this callout start
6 time list?

7 MR. BERGER: Objection. The document speaks for itself.

8 JUDGE WEDEKIND: Does the document show the time?

9 MR. LUNDGREN: And if -- if they're saying that -- that --
10 that they -- they agree and stipulate that this was posted at
11 3:42 p.m., then -- but I want them to say that. Because they
12 called a witness who said it was never posted.

13 MR. BERGER: I -- I think that's mischaracterizing.

14 MR. LUNDGREN: That's exactly what he said. He said he
15 called and it wasn't posted. And I'm proving that's not true.
16 So if you're stipulating --

17 JUDGE WEDEKIND: Well, this is joint exhibit. You --
18 you're agreeing that it's accurate?

19 MR. BERGER: Yeah.

20 JUDGE WEDEKIND: The transcript is accurate?

21 MR. BERGER: Yes. I don't think there's any disagreement
22 about the content of the message or the --

23 JUDGE WEDEKIND: Including the time?

24 MR. BERGER: Yes.

25 MS. CHEREM: As a practical matter, do you have the -- can

1 we have one of the extra hard copies?

2 MR. LUNDGREN: Sure.

3 MS. CHEREM: Would you mind? Thank you.

4 MR. LUNDGREN: You can have mine. Well, after you cross,
5 I can get you a copy.

6 MS. CHEREM: Whenever.

7 JUDGE WEDEKIND: How does that time --

8 MR. MERRITT: I have one more.

9 MR. LUNDGREN: That's fine I can work without one.

10 JUDGE WEDEKIND: Do we know, how did that time get in the
11 transcript? How is that?

12 MR. LUNDGREN: You're testing my memory. This transcript
13 was made five and half years ago. But it's been stipulated to.
14 It's part of the State Court record. It's never been -- in
15 fact, there's a -- I do remember. There's a declaration of an
16 Adam Doyle, he -- and they -- and there was actually a
17 discussion about whether the timestamp was accurate or not
18 because there was a -- a concern that a daylight savings time
19 switch had perhaps made it an hour off.

20 JUDGE WEDEKIND: Oh.

21 MR. LUNDGREN: And then that issue was corrected in the
22 State Court proceeding by Mr. Doyle.

23 JUDGE WEDEKIND: Okay.

24 MR. LUNDGREN: You're good?

25 MS. CHEREM: Yeah, he -- I'm absolutely fine. I can share

1 with him.

2 JUDGE WEDEKIND: Okay. So there's no -- it's stipulated,
3 apparently, that that was the time that's in the transcript.

4 MR. LUNDGREN: Sure. And if we could move to page 1170.

5 Q BY MR. LUNDGREN: And just to -- so you can clarify
6 something for us, explain it, Mr. Armitage. Do you see where
7 it says 3:47 p.m.?

8 A I do see that.

9 Q And then do you see on line 11 it says, "Dispatcher".

10 A Um-hum.

11 Q And then it says, "Here are your weekend" times -- "start
12 times for Saturday, August 19th" and begins listing start
13 times.

14 A Yes.

15 Q Why does that start time list appear twice in JX-6?

16 A Because after I post start times on the callout, I
17 typically call the callout list myself, as if I was a driver,
18 just to make sure that the recording was recorded properly.
19 And that's what you're seeing here. That's why there's a
20 different timestamp.

21 Q In your experience in dispatch in August 2017, what else
22 besides calling the drivers and posting the callout recording
23 before 5:00 p.m. was necessary for the drivers to report to
24 work the mat pour?

25 MR. BERGER: Objection. Calls for a legal conclusion.



1 JUDGE WEDEKIND: In his experience, was there anything
2 else he was required to do, is that the question?

3 MR. LUNDGREN: Was there -- was there anything else
4 besides calling the drivers and posting the callout recording
5 before 5:00 p.m.

6 JUDGE WEDEKIND: That?

7 MR. LUNDGREN: That was necessary for you to expect the
8 drivers to respond to that start time?

9 JUDGE WEDEKIND: Okay. That's fine. I mean he's
10 basically -- aren't you basically asking him if he was --

11 MR. LUNDGREN: Is there anything else you need to do,
12 besides what you did, to expect drivers to respond to the start
13 times?

14 JUDGE WEDEKIND: That's overruled. Go ahead.

15 A In the line of my duties, that is all I was required to
16 do.

17 Q BY MR. LUNDGREN: What was your expectation that night
18 about whether the drivers would report at the -- the assigned
19 time?

20 A I -- I mean, I had no reason to believe that they wouldn't
21 show up. I mean, they had just ratified the contract.

22 MR. LUNDGREN: And if we can go to JX, Joint Exhibit 4.1,
23 which is a State Court record, -065, Ross? Page 116. It's
24 a -- yeah, it's -- and if you could go to the next page. And
25 I'm showing it as page 116 of Joint Exhibit 4.1-065. And I'll

1 represent this document is also in the record in another place.
2 I think it's either a GC exhibit or Joint Exhibit.

3 MS. CHEREM: It -- it is. Just for the record, the -- I
4 believe that on the brief Daniel and Chris were concerned about
5 getting the easier to read copy of the Joint Exhibit in the
6 record, because when you pull it up it's completely blacked
7 out.

8 MR. LUNDGREN: Right. And this is the easier-to-read
9 version, I think. Or it may not be. But what happened was the
10 copy, at least that I got, was black and white.

11 MS. CHEREM: Got it. Well, it just -- it might be ongoing
12 trying to get a better version into the record.

13 MR. LUNDGREN: Okay, so --

14 MS. CHEREM: Because Daniel --

15 MR. LUNDGREN: -- when I went -- when I went to use the
16 one we stipulated to, it was black and white. And there's
17 color on here, so I can use it.

18 MS. CHEREM: Okay. Well, we're also still working on
19 getting a better copy.

20 MR. LUNDGREN: Okay. But it's in the record here, too.
21 So we're good.

22 MS. CHEREM: Yep.

23 MR. LUNDGREN: Okay.

24 Q BY MR. LUNDGREN: Can you tell us what this document is,
25 Mr. Armitage?

1 A So that is a copy of the paper start time list that we go
2 off of when we assign drivers their start times. In this
3 particular instance, this is a copy for the Saturday, August
4 18th, 2017 mat pour.

5 MS. CHEREM: I'm sorry, did you mean -- you said 18th.
6 Are we going to clarify that?

7 Q BY MR. LUNDGREN: Yeah. The mat -- the scheduling that
8 happened on August 18th.

9 A This -- this was made on the 18th. I'm sorry this is for
10 Saturday the 19th. It was made on the 18th for Saturday the
11 19th.

12 Q And that's what I was going to ask you, it has a date
13 8/19/17 at the top.

14 A Yeah. That's because these are start times for that date.

15 Q And when did you use this list to make the calls you were
16 describing? What day?

17 A Well, the -- well, I used that list on Friday the 18th
18 to --

19 Q So for example, there's checkmarks on the document.

20 A Yes.

21 Q And what do those checkmarks represent?

22 A Well, I -- I created a little ledger off to the side. So
23 if I can read it properly, I think the check means I talked to
24 this particular driver.

25 Q Sure. And you're free to step down and --

1 A Yeah. And so the -- the checkmark means -- I just
2 wanted -- we wanted to be as thorough as -- I wanted to be as
3 thorough as possible. So we started at the top to the bottom
4 to make the calls. And the reason we did that is because
5 everyone was being called in. So this issue of calling from
6 the bottom up is a moot point. So as I went down the list, if
7 I didn't talk to somebody but I got a voicemail, I put a VM
8 there. If I talked to somebody in person, I put a checkmark
9 there. There are some, I believe, that have both symbols,
10 which means maybe the second call we were able to talk to
11 somebody but maybe the first call we didn't.

12 Q And -- and I think it's self-evident in the document, but
13 let me ask you. The highlighted and yellow lines, what is
14 that?

15 A Those are people who had pre-scheduled vacations and they
16 would have -- I believe, would have been pre-scheduled before
17 the tri -- the strike ever started, and so those vacation times
18 were honored.

19 Q And you see the column marked radio?

20 A Radio? I do see that.

21 Q You see STP under that, next to some drivers' names, but
22 not all?

23 A I do see that.

24 Q And what does that mean?

25 A So we were involved in providing the materials for the

1 Seattle Tunnel Project. And so that was -- STP stands for the
2 Seattle Tunnel Project. In order for the drivers to be able to
3 go into that tunnel, they first had to attend some -- I believe
4 it was a safety training session. And so these are the ones
5 who had that training and we -- those are people that we knew
6 could go into that tunnel project. So it kind of stayed on
7 this list, whether we were using it or not because if there was
8 going to be Saturday work at the tunnel, we would have needed
9 to know which drivers could be sent into the tunnel for that.

10 Q And was that germane to your scheduling of the mat pour on
11 August 19th, 2017?

12 A No. No. It's simply there because on other Saturdays we
13 would have needed that.

14 Q And you see under the column, wash?

15 A I do.

16 Q There appears to be the letters VM.

17 A Yeah. It was an empty column. So that's where I put the
18 notes in terms of whether we left a voicemail or not.

19 Q And you see the list starts at a number 1, and goes
20 sequentially downwards. What does the number 1 represent?

21 A That's the most senior driver. The person on the list
22 that was hired first.

23 Q And as we go down the list to the bottom, how does that
24 reflect seniority, if at all?

25 A It is a seniority list, based on when they were hired.

1 Q And I understand the quality of the image is not great,
2 but can you tell plant location from this document for each
3 driver?

4 A You can. So for instance this driver here, Craig Coleman,
5 is in bold. So anyone that was in bold was stationed out of
6 the Kenmore plant. Anyone who was in italics, like Scott Hill,
7 was stationed at of Snoqualmie. And the ones that are in this
8 standard typeface would have been stationed in Seattle.

9 Q And let's go back to your calls on August 18th. And you
10 can stay with the list. If we went through the audio
11 transcript and found a handful of drivers did not get ten
12 hours' notice prior to the assigned start time, what would you
13 say about that?

14 MR. BERGER: Objection. Vague. Calls for speculation.

15 Q BY MR. LUNDGREN: How would you explain that?

16 JUDGE WEDEKIND: Well, don't answer yet, we've got an
17 objection. Was that a clarification?

18 MR. LUNDGREN: Yeah, and -- and I can rephrase it.

19 JUDGE WEDEKIND: Oh.

20 MR. LUNDGREN: I mean I don't think I need to, but I will
21 if it makes it easier.

22 JUDGE WEDEKIND: Yeah.

23 Q BY MR. LUNDGREN: If you were -- if we went through the
24 audio transcript of your calls on August 18 -- which we had up
25 earlier -- if we were to go through that and we were to see

1 that you made a call to a driver and assigned a start time to
2 driver, and there wasn't ten hours between that call time and
3 that start time, what would you -- how would you explain that?

4 A Well, as I testified before, I -- at the time, I had no
5 understanding that that was something that I was required to
6 do. If that happened, it's simply because we didn't get the
7 calls made in time. But again, I wasn't -- I wasn't under the
8 understanding that was something that we had to do. Like I
9 said, this didn't come to my attention until a couple months
10 ago when Dean Valenta came up and informed Kevin that he hadn't
11 had his ten hours. But at the time, I had no knowledge of
12 that.

13 Q And where on the list would you expect to find drivers who
14 may not have received the ten-hour gap time between your call
15 and the start time assignment?

16 A Well, I mean if that happened it would've been at the
17 bottom of the list. Because we started at the top and worked
18 our way down. I started from the top, I should say. Later on,
19 Dave Hayes helped me make the second batch of calls and we
20 split the list. But by then all the calls had been made once.

21 Q And what would your expectations be if you called a driver
22 and assigned a start time, and there wasn't a full ten hours
23 between your call time and the assigned start time? What would
24 your expectations be on --

25 MR. BERGER: Objection.

1 Q BY MR. LUNDGREN: -- August 18th of 2017?

2 MR. BERGER: He already testified that he had no knowledge
3 of it at the time, so how could he have had any expectation?

4 JUDGE WEDEKIND: That's sustained.

5 MR. LUNDGREN: I have no further questions.

6 JUDGE WEDEKIND: I'm also a little confused about the ten
7 hours between the call time and the assigned time?

8 MR. LUNDGREN: Say that again?

9 JUDGE WEDEKIND: I'm confused about the questions about
10 the ten hours between the call time and the assigned time?

11 MR. LUNDGREN: Yeah --

12 JUDGE WEDEKIND: I thought the ten-hour rule was between
13 the last time they worked --

14 MR. LUNDGREN: Right.

15 JUDGE WEDEKIND: -- and the next time they worked? So
16 what is it?

17 MR. LUNDGREN: Do you want to have the discussion off the
18 record or on the record, Your Honor? Because I don't want to
19 testify but I can explain it to you very concisely.

20 JUDGE WEDEKIND: Oh.

21 MS. CHEREM: Yeah.

22 MR. BERGER: Yeah, I can -- I can explain. The -- the
23 Union's position is addressed in the State Court action as
24 well, is that the contract that was ratified for 2017 had a new
25 provision requiring for work that was to begin between midnight

1 and 4:59 a.m., the provision of at least ten -- ten hours'
2 notice between the call and the start time.

3 JUDGE WEDEKIND: Okay.

4 MR. LUNDGREN: But that labor agreement didn't exist on
5 August 18th, 2017. Granted they had voted to ratify it.

6 JUDGE WEDEKIND: Right.

7 MR. LUNDGREN: It wasn't signed until months later and it
8 wasn't --

9 JUDGE WEDEKIND: We can -- we've had this discussion.

10 MR. BERGER: And retroactive.

11 MR. LUNDGREN: -- written up. And then it was never
12 even -- apparently nobody's ever even noticed it until two
13 months ago, or three months ago, so.

14 JUDGE WEDEKIND: But am I missing something? Isn't there
15 also a ten-hour DOT --

16 MS. CHEREM: That's what I was going to say, unrelated to
17 what he's saying. There's also a ten-hour Department of
18 Transportation rule that there's been some testimony about.

19 JUDGE WEDEKIND: Okay.

20 MS. CHEREM: And that's for driver rest.

21 JUDGE WEDEKIND: Right. Okay. Were you aware --

22 MS. CHEREM: But these are two separate scenarios.

23 JUDGE WEDEKIND: I just want -- I just want to clarify.

24 MS. CHEREM: Yeah.

25 JUDGE WEDEKIND: So were you aware of the DOT ten-hour

1 rule back then?

2 THE WITNESS: Yeah. I mean, the DOT rule means that
3 between shifts, so from the time a driver clocks out from his
4 last working shift to the time of his start or his next working
5 shift, he's required to be given at least ten hours rest. We
6 knew that rule. What we weren't aware of, was that the Union
7 was now asking us to notify them ten hours before.

8 JUDGE WEDEKIND: Okay. But in scheduling back then, did
9 you take into account the DOT ten-hour rule?

10 THE WITNESS: Sure. And as I testified before, what that
11 meant is we would not purposely schedule someone with less than
12 ten hours rest. If extenuating circumstances came up where a
13 driver was, you know, on a job that he got in late, then we
14 understood that he would clock in only after his ten hours. So
15 we -- we weren't forcing them to come in and break that rule in
16 any way. We were doing our best to respect it, but there could
17 be circumstances where a driver gets stuck out on a job the
18 night before. And in those instances, he knows he takes his
19 ten hours off, he does not clock in before that.

20 JUDGE WEDEKIND: Okay. Well, let's just -- this is a
21 question I had also. First of all, thank you for clarifying.
22 Now, I understand. It was a little confusing to me, going back
23 and forth. But as to that, so let's say you schedule someone
24 within seven hours, three hours under the DOT rule. That
25 person can't just ignore -- can -- can that person ignore your

1 assignment altogether, or do they have to come in three hours
2 later?

3 THE WITNESS: If he ignored it, he would be taking
4 responsibility himself for breaking that rule. We want them to
5 come in three hours later. We want them to respect the DOT
6 rule.

7 JUDGE WEDEKIND: Well, now, wait a minute. Breaking what
8 rule? If he's --

9 THE WITNESS: The DOT rule.

10 JUDGE WEDEKIND: Well, he hasn't broken it if he doesn't
11 come in.

12 THE WITNESS: That's what I mean. You said, what if he
13 does come in. I thought that's what your question was.

14 JUDGE WEDEKIND: No, no, I'm sorry. I'm asking a
15 different question. So I -- what I'm asking is, does he have
16 the option of just ignoring the assignment altogether or does
17 he have to come in three hours later?

18 THE WITNESS: He needs to come in three hours later.

19 JUDGE WEDEKIND: And that's your understanding?

20 THE WITNESS: That is my understanding.

21 JUDGE WEDEKIND: Okay. All right. Where are we now? Are
22 we --

23 MR. LUNDGREN: I -- I had no further questions, save for
24 redirect.

25 JUDGE WEDEKIND: Okay. Cross?

1 MS. CHEREM: Yes. Your Honor, can I have just a minute?

2 JUDGE WEDEKIND: Sure. Off the record.

3 (Off the record at 11:04 a.m.)

4 **CROSS-EXAMINATION**

5 Q BY MS. CHEREM: Good morning. My name is Rachel. I'm a
6 counsel for the General Counsel in this matter, and I'm going
7 to be asking you a few follow-up questions.

8 A Okay.

9 Q So you testified that on August 11th you were on vacation
10 at Yellowstone, right?

11 A No.

12 Q Yosemite.

13 A Yosemite. There you go.

14 Q Yosemite, okay. Do you remember when you got back from
15 vacation?

16 A I don't. I know it was some time while the strike was
17 still going on, but I don't remember the exact day.

18 Q Okay. Do you remember like if Friday was August 18th, and
19 you know you were working that day, do you remember how many
20 days before that it may have been?

21 A I really don't. It was so long ago. Yeah.

22 Q Okay. On Friday, August 18th, how did you find out that
23 the CBA had been -- the Collective Bargaining Agreement had
24 been ratified?

25 A Well, Melanie O'Regan came up to the dispatch office and

1 told us. I believe that is how I found out. That's what my
2 memory tells me.

3 Q What, if anything else, did she say when she came up to
4 let you know that the contract had been ratified?

5 A I mean, she just directed us to start working on the
6 callout list and start getting it going because she said, now
7 that it's been ratified, you know, there's -- there's going to
8 be a mat pour, so you guys got to start working on this callout
9 list. That's basically the direction that she gave us.

10 Q Okay. So she said start working on a callout list for a
11 mat pour?

12 A Um-hum.

13 Q Okay. Did she tell you how many drivers would be needed
14 for the mat pour?

15 A I think she left that up to us. You know, I mean, that's
16 typically a dispatch function.

17 Q Okay.

18 A Yeah.

19 Q Does dispatch have some information, generally, on which
20 to base its calculations or decisions?

21 A How do we -- how do we base -- are you asking me how we --
22 base --

23 Q Yeah.

24 A -- how we base -- well, we basically look at, you know,
25 how many yards -- how many yards per hour, and how far the job

1 is away from that. And based on, you know, those things, we
2 can figure out how many drivers we've got to call in.

3 Q Got it. Okay. While we're on that, who generally makes
4 the schedule?

5 A For Saturday?

6 Q Let me know if it's different on weekdays or Saturdays.

7 A So weekdays are different.

8 Q Okay.

9 A Typically, during the weekdays it's the morning dispatcher
10 who's responsible for making the callout list. He doesn't
11 necessarily post it because, you know, his shift will be over
12 at 1:00.

13 Q Sure.

14 A So someone in the p.m. would post it, but usually it's the
15 morning dispatcher. Saturdays is different. Saturdays is --
16 is usually left up to the person that is going to be running
17 the job -- the dispatcher that is going to be running the job
18 on that Saturday. And so, in a mat pour you might have more
19 than one dispatcher because we may need to come in in shifts.
20 So on this particular Saturday, I believe -- I believe that's
21 my handwriting on there, so I was probably the one who made up
22 the schedule. I'm not sure. Sometimes managers will help us
23 make it up, and then I make the calls. I don't really remember
24 who did -- who actually did the scheduling.

25 Q Okay. So sometimes you're involved in the scheduling?

1 A Sometimes I am, and other times I'm not.

2 Q And you don't remember if on August 18th you were involved
3 in deciding the schedule?

4 A Yeah. I don't remember if I was actually the one that --
5 that -- obviously I was the one who made the calls, those are
6 my notations. But I don't remember if I physically created the
7 actual schedule or not.

8 Q And you mentioned making the calls. Did anybody -- any
9 other dispatchers assist you in making calls that Saturday?

10 A Yeah. I mean, after -- I went through top to bottom
11 myself, the first time.

12 Q Okay.

13 A And we wanted to make sure because, you know, they hadn't
14 worked that day, they were, you know, at a Union meeting that
15 morning. We wanted to make sure we gave them every opportunity
16 to know they were going to have a start time. So we decided,
17 let's call them one more time. But by then, it was starting to
18 get, you know, later in the afternoon. So we split the
19 schedule between myself and Dave Hayes. And I think I took the
20 top half and he took the bottom half --

21 Q Okay.

22 A -- and that way we could go through it quicker. So yeah.

23 Q Got it. So when we're reviewing the transcript, that
24 first round of calls is all you. And that second round of
25 calls is split between you and -- remind me of the name again?

1 A Dave Hayes.

2 Q Dave.

3 A That would be correct.

4 Q All right. How long was Melanie in the dispatch office
5 when she first came in to let you know that the strike was over
6 and to start scheduling -- working on scheduling?

7 A I want to say that she was there for at least most, if not
8 all of the time, that calls were being made. In and out, at
9 least. So she wasn't there the whole shift. You know, like
10 she wasn't there like 9:00 to 5:00, when I worked --

11 Q Okay.

12 A -- but she was there, like I said before, I don't remember
13 the exact time that she came up, but she would've been up there
14 for at least a couple of hours, I think.

15 Q Okay. And on a normal day, how much time does Melanie
16 spend in the dispatch office?

17 A Sometimes you'd never see her. You know, she worked in
18 the other building. So, yeah.

19 Q Okay. For mat pours, does CalPortland always schedule all
20 the drivers, or is there a -- or can there be variations in the
21 number of drivers?

22 A Mat pours tend to be pretty big, so I would say most of
23 the time all of the drivers are called in. Again, if -- if
24 they weren't all needed then maybe a few of them would be, you
25 know, not required to come in, but certainly, the majority of

1 them would be in.

2 Q All right. I am going to ask you for a favor in helping
3 us to depict our own document.

4 MS. CHEREM: Can we pull up that highlighted one again?

5 MR. MERRITT: What's the highlighted one?

6 MS. CHEREM: That -- yes. And then, do we ha -- well, it
7 looks like we have a copy of the -- I think we put into the
8 record as joint exhibit the following Saturday or something?
9 Is that -- can we go off the record for just a minute?

10 JUDGE WEDEKIND: Sure. Off the record.

11 (Off the record at 11:15 a.m.)

12 MS. CHEREM: This is my copy.

13 MR. LUNDGREN: Okay. But that -- if we pull up 5-B it
14 doesn't look like that, right? It's black and white.

15 MS. CHEREM: I have absolutely no idea.

16 MR. MOON: 5-B, I think, in the record is black and white,
17 but we can pull it.

18 MS. CHEREM: Okay. And we will add this to our list of
19 things to work in getting better copies for the record.

20 MR. MOON: We're -- you know, we're working on it.

21 MS. CHEREM: Okay. Okay.

22 MR. LUNDGREN: Sorry. I didn't --

23 (Counsel confer)

24 MR. LUNDGREN: And so what's on the screen is, just for
25 the record, Joint Exhibit 4.1-065, page 116. And it's from the

1 State Court record. It has a corresponding State Court record
2 Bates stamp of CP, which is clerk papers, -216.

3 MS. CHEREM: I think this is 5-A.

4 MR. MOON: Yeah. Yeah. And it is in our record as
5 Exhibit 5-A.

6 MR. MERRITT: I can put 5-B up if you give me just one
7 moment for that.

8 JUDGE WEDEKIND: I feel sorry for whoever's reading this
9 transcript. So what --

10 MR. MOON: Yeah. Thanks for the confidence.

11 JUDGE WEDEKIND: -- what are we -- is it -- so what did
12 we -- what did we show the witness here, Joint Exhibit 5?

13 MS. CHEREM: Okay. The witness has 5-B in front of him.

14 JUDGE WEDEKIND: Okay. And then we have the 4.1.

15 MS. CHEREM: And we are also going to be getting 5-A and
16 5-B back on the record -- back on the big screen.

17 MR. LUNDGREN: And that's Joint Exhibit 5 --

18 MS. CHEREM: Joint exhibit.

19 MR. LUNDGREN: -- B.

20 MS. CHEREM: I can also give the witness my copy of Joint
21 Exhibit 5-A. It's the best I have. I'm just trying to make
22 sure I can read the names.

23 JUDGE WEDEKIND: Now, did you say that 5 -- that one you
24 just handed, Joint Exhibit 5-A is the same as this Joint
25 Exhibit 4.1, et cetera.

1 MS. CHEREM: Yes, it should be.

2 JUDGE WEDEKIND: Okay. Thank you. Got it.

3 **RESUMED CROSS-EXAMINATION**

4 Q BY MS. CHEREM: Okay. So you should have in front of you
5 Joint Exhibit 5-A and 5-B, which are also reflected on the
6 screen. I personally have a hard time reading 5-A. Are you
7 able to tell us -- and you can use 5-B if it assists you -- the
8 names on the blacked out -- or the -- the names on 5-A that
9 appear almost blacked out?

10 A Yeah, I mean that's where this 5-B one comes in handy. So
11 the blacked-out ones would be Mike Reinhart -- starting from
12 the top, Mike Reinhart, Steve Maurice, Greg Duff (phonetic
13 throughout), is that Shawn? Who is that? That's Shawn
14 McGreggor (phonetic throughout), I believe, Scott Wallace
15 (phonetic throughout) and Dan Arnold.

16 Q Okay. And Dan Arnold, which numbers is he between?

17 A Well Dan Arnold is number 70 on 5-B.

18 Q Okay. And on 5-A?

19 A And on 5-A, looks to me the same.

20 Q Okay.

21 A It's really hard to read --

22 Q Yeah.

23 A -- but it's --

24 Q Okay.

25 A I believe that's Dan Arnold because I wouldn't miss it.

- 1 Q Okay, so based off of your understanding --
- 2 A Based on my understanding.
- 3 Q -- that's what you believe the names would read on 5-A for
- 4 the ones that are quasi --
- 5 A Um-hum.
- 6 Q -- unintentionally blacked out. Okay. Also, looking at
- 7 5-A. I see some Xs -- or what appear to be to me Xs, on the
- 8 left-hand side of certain numbers for 5-A. That's the August
- 9 19th --
- 10 A Um-hum.
- 11 Q -- one. Do you know who put those Xs there?
- 12 A I don't.
- 13 Q Do you know what they mean?
- 14 A Well, it looks like in -- in each instance there's someone
- 15 who's already got a vacation day schedule. So that's what it
- 16 looks like to me. Someone had gone down the list and put Xs by
- 17 people who had already got pre-scheduled vacations. And then
- 18 later on they took a yellow marker. That's what I -- that is
- 19 what I'm going to assume.
- 20 Q Okay, so your -- your -- that's your --
- 21 A That's my assumption.
- 22 Q -- thought on what the might be, but you're not sure?
- 23 A I'm not sure, but that's pretty clear to me that that's
- 24 what it would be.
- 25 Q Okay. All right, thank you. That was what I needed.

1 Sorry about the confusingness (phonetic throughout) of just
2 trying to see. Okay. So you talked a little bit about the GPS
3 tracking system and the arrows and the maps that it appears on.

4 A Um-hum.

5 Q I want to ask you some questions about that. Do you know
6 if those maps are visible later at any point? Or, like, do you
7 know if it's something that's only available in real time?

8 A Well, I mean if you're asking me will the locations of
9 those trucks be reflected later on -- could you pull them up
10 later on? I mean the map can be pulled up anytime, right.

11 Q The map can be pulled up any time?

12 A Anytime the system's functioning, yeah. I mean, the map
13 can be pulled up. The -- the trucks will have -- if the system
14 is functioning properly, then the -- the trucks will have left
15 that -- the location that you looked at earlier, you know.

16 Q Okay, so like if I, today, wanted to pull up a map from
17 7:00 a.m. on August 11th, 2017, can I do that?

18 A I don't think you can. I -- I have no -- I have no
19 knowledge of you being able to do that.

20 Q So if I was looking at the map at 7:00 a.m. on August
21 11th, I could see the map.

22 MR. LUNDGREN: Objection. Speculation. Foundation.
23 Asked and answered.

24 JUDGE WEDEKIND: If you were looking at what map?

25 MS. CHEREM: The GPS tracking map he was telling me about.

1 JUDGE WEDEKIND: On what date?

2 MS. CHEREM: On -- so if you're looking at it, at the
3 moment you want to know the information, you can see it at that
4 time?

5 A Well, again, I wasn't there August 11th.

6 Q BY MS. CHEREM: Sure.

7 A But --

8 Q So as of the time that you are there.

9 A But -- but yeah, when I am dispatching I can pull it up
10 and look at the information that's reflected on that map at
11 that given moment.

12 Q Have you ever had the occasion to try to go back to look
13 at a map from earlier?

14 A I never have. I don't -- I don't -- I don't even know
15 if -- I don't even --

16 Q Do you --

17 A -- know if that's possible.

18 Q And that was going to be my next question.

19 A Yeah.

20 Q Do you know whether that's possible?

21 A Yeah.

22 Q Okay. After you got back from vacation -- so sometime
23 between August 11th and August 18th, but you're not totally
24 sure when -- were you involved in determining which tickets
25 from August 11th should be voided?

1 A I don't think I was involved in that at all.

2 Q Okay.

3 MS. CHEREM: I have nothing further at this time.

4 MR. BERGER: Can we go off the record? I might need a few
5 minutes?

6 JUDGE WEDEKIND: Sure. Off the record.

7 (Off the record at 11:24 a.m.)

8 JUDGE WEDEKIND: All right. Cross?

9 MR. BERGER: Yes.

10 **CROSS-EXAMINATION**

11 Q BY MR. BERGER: Good morning, Mr. Armitage. My name is
12 Ben Berger. I am an attorney for Charging Party, Teamsters
13 Local 174. I have a few follow-up questions for you --

14 A Sure.

15 Q -- about your testimony. You testified about a dispatch
16 phone line, I believe, that customers or drivers can call in
17 to. Is that right?

18 A Yeah. So the -- the -- those are kind of two separate
19 things. That customers call our number and that's how they
20 place orders. We do the scheduling. The -- the callout line
21 that the drivers use is part of the same phone tree, they just
22 have to hit different buttons to get to the section where
23 their -- their start times are posted.

24 Q Okay. And that line that the drivers call is recorded?
25 Is that correct?

1 A It's recorded when I post them. If they call in from
2 their phones, there would be no recording that they called in.

3 Q There is no recording you can subsequently listen to, is
4 your testimony.

5 A The only -- there's no -- there would be no -- to my
6 knowledge, there would be no recording of them having called
7 this -- that line to -- to get their start times.

8 Q Okay. If -- but if you speak to a driver on the phone?

9 A It would be recorded.

10 Q It would be recorded. And how is that recording
11 maintained?

12 A I mean, there's some kind of a software database. I don't
13 know how long it's kept on the record, but I know that when
14 after -- after the mat pour didn't go off, I believe it was
15 Adam Doyle and I that went and retrieved the recordings that
16 you saw in that transcript.

17 Q Okay. And similarly, let me ask about the truck radio
18 recording -- or, excuse me. The -- the conversations between
19 dispatchers and between drivers using the truck radio is also
20 recorded, correct?

21 A It -- it was. I don't think it still is, but it was at
22 that time. It was a different system back then.

23 Q Okay. And is there a system that it -- is there a
24 software system that exists to maintain that recording?

25 A In those days, there would have been some software system

1 that you could login and retrieve those recordings.

2 Q Do you know how long those radio recordings under the
3 audio system -- unless you took some other action in its own
4 course -- how long those records remained?

5 A Well, I believe I got some for Brent in -- some of the
6 recordings from that morning fairly recently, like maybe within
7 the last couple of months. So some of those recordings were
8 still active. And -- and should still be there actually.

9 Q Okay.

10 A The transmissions -- the radio transmissions.

11 Q Do you have any personal knowledge whether Glacier -- or
12 do you -- have you received any directives from your supervisor
13 to ensure that truck audio recordings are maintained?

14 A No. It was a -- first of all, the system no longer
15 exists. Anything that is, we were still able to pull up was
16 simply because somebody, at the time, had the foresight to save
17 them somewhere. And I think that's -- I believe that's how I
18 found them. Because Brent asked me to get some recordings in
19 preparation for the trial. And -- I'm -- I'm trying to think
20 about how I went about that. I think -- oh, no, I think I know
21 how I went about it. There was a -- there was a UPS [sic]
22 stick that was still around because there was -- the old
23 system, it had -- it -- it kept track of the recordings through
24 software, but it also needed a like UPS [sic] stick to -- to
25 function, and --

1 Q Just to interrupt, when you say, "UPS stick", you're
2 referring to USB drives?

3 A That's what I meant. I'm sorry, yeah.

4 Q Go ahead.

5 A There you go. So anyway, yeah, a USB drive, a thumb
6 drive. And I believe that's where I found them this time when
7 he asked me to -- to find some. So there were still that --
8 that thumb drive still exists and some -- and the recordings
9 from the radio transmissions from that day are on that thumb
10 drive.

11 Q I see. But you have no knowledge if there was a similar
12 process for retrieving the phone line records? Not the -- not
13 the truck radio records, but the actual phone line records.

14 A Yeah, I don't know how long those stayed in the database.
15 I don't -- we didn't have to maintain either of those. You
16 know, there was a way to retrieve stuff for a certain amount of
17 time. I don't know when that time frame expired.

18 Q And I -- you mentioned that, I believe it was in
19 connection with the audio, the radio recordings that someone
20 had the foresight to save them?

21 A You know that's my -- that's what I said first, and then I
22 remembered the way I found them. You're right, I did say that
23 first, but I was thinking it through -- a couple weeks ago, I
24 don't know how long ago it was, Brent asked me to in -- in
25 preparation for the trial, to see if we could find any of those

1 radio transmissions from the 11th. Of course, I wasn't there
2 that day. And so I thought about it, and I poked around, and I
3 found that the thumb drive still existed. And I remembered the
4 setup of how it was, and I knew that the thumb drive was a part
5 of the system.

6 So I just played around with it and -- and I found in --
7 in that thumb drive there was -- there was files. And I -- I,
8 you know, was able to download those files and it turned out
9 that they -- they were files of radio transmissions.

10 Q And were those radio transmissions specific to August
11 11th, or did it cover --

12 A You could find them for the, actually, the whole month.
13 It took a little poking around, but it would -- there were
14 others there. And -- and obviously, I didn't listen to all of
15 them, but it wasn't just August 11th. You could find -- and
16 like I said, that thumb drive still exists. You can -- yeah.

17 Q And to the best of your recollection, what was the period
18 covered by the transmissions in that thumb drive?

19 A What was the period? You mean how many hours during that
20 day or whatever?

21 Q I'm asking the dates covered. Was it just August 11th,
22 2017?

23 A No, I -- I think it was much more than that. I think it
24 was -- I had never done this before, so it was just a guess in
25 terms of how to try to find these files. Brent asked me to do

1 it, so this isn't something I regularly do. When I realized
2 that there was a thumb drive from that system, I went through
3 and I forget how I figured out which date those days were, but
4 there's a -- there's a way to do it. And they aren't the only
5 days. That -- that August 11th is not the only day that's on
6 there. There's a whole bunch of other days, months even, maybe
7 even years, that are on that thing.

8 Q I see. Mr. Armitage, do you have any role in negotiating
9 the Collective Bargaining Agreement between Teamsters 174 and
10 Glacier Northwest?

11 A No.

12 Q Do you have any role in enforcing that agreement?

13 A No.

14 Q Did you examine the -- any Collective Bargaining Agreement
15 before beginning the process of dispatching for the August
16 19th, 2017 mat pour?

17 A Huh-uh.

18 Q Were you directed to --

19 JUDGE WEDEKIND: Yes or no. Yes or no.

20 THE WITNESS: Oh I'm sorry.

21 A No, I did not.

22 Q BY MR. BERGER: Were you directed to do so by anyone?

23 A No.

24 Q At any point on August 18th, 2017, did you check in with
25 any supervisors about your progress in making contact with

1 drivers?

2 A Could you -- could you repeat that again?

3 Q Sure. On August 18th, 2017, did you speak to or
4 communicate in any way with any supervisors about your ability
5 to reach drivers who you were attempting to call?

6 A I may have. Like I said, Melanie was in the room. She
7 may have asked me, you know, how the progress is going, you
8 know? But I don't -- I don't have any clear memory of any
9 communication about that.

10 Q Okay. If you -- do you recall, what, if anything, you
11 responded to Melanie?

12 A I -- like I said, I don't have any clear memory of that,
13 so.

14 Q I think you testified a little bit in response to a
15 question from the counsel for the General Counsel, about
16 whether you were asked by Mr. Nordyke to examine how certain
17 load tickets were voided. Do you recall that?

18 A Could you give me that one again?

19 Q I think there was a question about whether you were tasked
20 with looking into load tickets and --

21 A And voiding them?

22 Q -- whether they were voided.

23 A Oh, yeah, that was a question that she asked. If I was, I
24 don't remember doing that. I mean it -- it is one of our
25 functions that we are asked to do. On that specific date, was

1 I asked to do them, or I was asked to do them after that date,
2 I don't remember.

3 Q Okay. And -- and my questions is a bit different. It's
4 just did -- did you speak to Mr. Nordyke about any of the
5 events of August 11th at a later date?

6 A Oh, I'm sure we talked about the whole thing at some
7 point. I mean, you got to remember I was on vacation. So when
8 I came back, I probably asked, you know, what happened that
9 day. But I -- I don't have any clear memory of what we would
10 have talked about, other than just generally what happened.

11 Q Okay. Let -- let me clarify; were you tasked by Mr.
12 Nordyke, or anyone else, into looking into any records relating
13 to August 11th as part of your official duties?

14 MR. LUNDGREN: Objection. Asked and answered.

15 A If I was, I don't remember it. Oh, I'm sorry I shouldn't
16 have answered that. I'm sorry.

17 JUDGE WEDEKIND: Overruled. Answer is in the record.

18 MR. BERGER: You can answer.

19 MS. CHEREM: He already did.

20 MR. BERGER: Oh, I'm -- I'm sorry.

21 Q BY MR. BERGER: Can you repeat your answer? I missed it.

22 A Oh. If I was, I don't have any memory of it.

23 Q I see.

24 MR. BERGER: I have no further questions at this time.

25 JUDGE WEDEKIND: How did -- just to follow up on that. I

1 mean, how often did you speak to Mr. Nordyke during that period
2 of time in general?

3 THE WITNESS: I mean, we work in the same building. So
4 you know on and off I see these managers, you know, a couple
5 times a day and we'll speak about different things.

6 JUDGE WEDEKIND: What kind of things did you speak to Mr.
7 Nordyke about in general? Like what --

8 THE WITNESS: Well, you know, at the time, Brent was, you
9 know, the truck boss. So you know, there would have been
10 conversations about, you know, drivers, you know -- you know,
11 did this driver call in sick this -- on this given day. Or you
12 know, I need this driver to come down to my office because we
13 got to talk about something or we need -- this truck needs to
14 be moved or something like that.

15 JUDGE WEDEKIND: And would you ever communicate with him
16 other than in person and how did you do that?

17 THE WITNESS: There have been times I've called Brent's
18 cell phone if he wasn't, you know, in the office to ask him,
19 you know, information, things like that.

20 JUDGE WEDEKIND: That's the only --

21 THE WITNESS: Sometimes we send emails, you know, to each
22 other.

23 JUDGE WEDEKIND: Okay. But that -- those are the only two
24 ways you would do it. Did he -- I'm sorry, let me just ask,
25 did he have a radio as far as you know?

1 THE WITNESS: No.

2 JUDGE WEDEKIND: Okay. Thank you.

3 THE WITNESS: Not -- not to my -- there was a time when we
4 had Nextels and things like that. He may have had one back in
5 those days, but once we went to the two-ways, there were no
6 portable two-ways or anything like that. You'd have to either
7 have one stationed, like at a desk, or it would be in the
8 truck. There was no handheld radios. There's -- there's some
9 yard radios and things like that that we had, but I don't think
10 Brent had one. Yeah, and so I wouldn't have communicated in
11 that way, let's put it that way. If -- even if he did, I -- I
12 wouldn't have communicated with him because I didn't have one.

13 JUDGE WEDEKIND: Well, that raises another question.
14 So -- I didn't realize it. So as you said -- you just said the
15 radios were not handhelds. And that --

16 THE WITNESS: Yeah. Not -- not -- so there are some --
17 we've got a two -- we've got a two-way radio communication
18 system, right? And there are a couple handhelds, but very few
19 people have them. For instance, the yard guys have them and we
20 can talk to them, you know, on them. I'm -- they're not -- I'm
21 not sure if they're the same as the -- the two-way, or if they
22 were the same as the two-way system back in those days, but --

23 JUDGE WEDEKIND: But were they on the same channel?

24 THE WITNESS: I don't -- no, they wouldn't have been on
25 the same channel. I think the yard guys -- the yard guys are

1 on a different channel because I know now if I need to talk to
2 the yard guy, like for instance, if someone's coming back with
3 some retain or something, and we have to say, hey, you know,
4 this truck is coming around back, we just want to give you a
5 head's up that you've got a load coming back. We've got to
6 dial into a different channel. So it -- I don't really -- I
7 don't know the technology well enough, but they would have been
8 on a different channel if they were.

9 JUDGE WEDEKIND: Did you ever see the inside of the trucks
10 back then?

11 THE WITNESS: Not -- I mean, I drove a truck before then,
12 you know, back in 2000.

13 JUDGE WEDEKIND: Well, I'm asking you, did you actually
14 see the inside of the trucks to know what the radios look like?
15 Because that's the only way --

16 THE WITNESS: No. Actually I've never been in a truck
17 since they've had the two ways, no.

18 JUDGE WEDEKIND: Okay. That's it. Anything else?

19 MS. CHEREM: Just a little bit of follow-up just to
20 understand the radios.

21 JUDGE WEDEKIND: Okay. Sure.

22 MS. CHEREM: Because I wasn't -- if you -- when you guys
23 are talking to each other, it's a little harder to hear out
24 here.

25 **FURTHER RECROSS EXAMINATION**

1 Q BY MS. CHEREM: My apologies if you already said this, it
2 might just be I didn't hear correctly. Did -- did you say
3 there are no handhelds of the two-way radios that you use to
4 communicate to dispatch with the trucks?

5 A So right now we've got handhelds. And you can dial them
6 in to -- if you have a handheld, you can dial them in and talk
7 to the trucks, if you're on the right channel.

8 Q Oh, that's right now.

9 A I didn't know whether -- I didn't know whether Brent had
10 one of those or not. I know that there's -- there's ones that
11 we have up there in the office and we can use those when we
12 want to talk to a yard guy because he's on a different channel.
13 So I don't pick up the CB handheld and --

14 Q Um-hum.

15 A -- just to get a hold of a yard guy.

16 Q Got it.

17 A He's on a completely different channel and we also can --
18 at the time, we may have had Tacoma DuPont on a different
19 channel that you may have been able to talk to on the
20 handhelds, too. I don't remember, --

21 Q Okay.

22 A -- you know.

23 Q So in 20- -- in August of 2017, you had one set of radios
24 that were the two ways for dispatch to drivers, and the yard
25 people had separate handheld radios on a different channel?

1 A On separate channels from -- I'm pretty sure that's how it
2 works.

3 Q Okay. That's what I wanted to -- I wasn't sure that I had
4 understood that, so.

5 MR. BERGER: Can I also ask one follow-up question?

6 JUDGE WEDEKIND: Sure.

7 MR. BERGER: Thank you.

8 **FURTHER RECROSS EXAMINATION**

9 Q BY MR. BERGER: Mr. Armitage, were you involved in any way
10 in the decision to discipline any drivers in connection with
11 the aborted August 19th, 2017, mat pour?

12 A No.

13 Q Okay.

14 MR. BERGER: That's it.

15 JUDGE WEDEKIND: Okay. Anything else? All right, thank
16 you very much. Thanks for your testimony.

17 THE WITNESS: Yep, sure.

18 MS. CHEREM: Oh, careful. Sorry?

19 THE WITNESS: Do you want these back?

20 JUDGE WEDEKIND: You can leave them there.

21 MS. CHEREM: You can -- either way. Thank you.

22 JUDGE WEDEKIND: Go ahead. Watch your step.

23 MS. CHEREM: Thank you.

24 MR. LUNDGREN: I'm going to walk the witness out, Your
25 Honor --

1 JUDGE WEDEKIND: Sure

2 MR. LUNDGREN: -- since it's probably lunchtime.

3 JUDGE WEDEKIND: Okay. Let's go off the record.

4 (Off the record at 11:47 a.m.)

5 JUDGE WEDEKIND: Respondent, call your next witness.

6 MR. PAYNE: The Respondent calls Scott Nicholson to the
7 stand.

8 JUDGE WEDEKIND: Good afternoon, Mr. Nicholson. Could you
9 state your name for us for the record, and spell it.

10 THE WITNESS: Scott Nicholson. S-C-O-T-T
11 N-I-C-H-O-L-S-O-N.

12 JUDGE WEDEKIND: Okay, thank you very much. Raise your
13 right hand and I'll swear you in.
14 Whereupon,

15 **SCOTT NICHOLSON**

16 having been duly sworn, was called as a witness herein and was
17 examined and testified as follows:

18 THE WITNESS: Yes.

19 JUDGE WEDEKIND: Thank you very much. Counsel?

20 **DIRECT EXAMINATION**

21 Q BY MR. PAYNE: Are you employed, Mr. Nicholson?

22 A Yes.

23 Q Where are you employed?

24 A Glacier Northwest.

25 Q In what capacity are you currently employed at Glacier?



1 A Vice president/general manager for the Washington
2 Division.

3 Q Okay. For the Washington Division, meaning what?

4 A The -- our operations in Kitsap, King/Pierce County.

5 Q Okay. And what operations?

6 A We have eight ready-mix sites and we have five aggregate
7 production sites, and two aggregate refill yards.

8 Q So does aggregate and ready-mix fall under your
9 jurisdiction?

10 A Yes.

11 Q To whom do you report?

12 A Bill Monn (phonetic throughout).

13 Q And what is Bill Monn's title?

14 A Senior VP of the materials group for CalPortland.

15 Q How long have you been employed at Glacier?

16 A Next month it will be 43 years.

17 Q And in what management positions have you been employed at
18 Glacier?

19 A My previous position to this one was Director of
20 Aggregates. Previous to that, I was the aggregate operation
21 manager. Previous to that, the superintendent of the DuPont
22 plant. And before that, superintendent to the Snoqualmie
23 plant.

24 Q What are your current duties as vice-president?

25 A I oversee sales and operations for the division.



1 Q And how long have you been in that position?

2 A Since January of 2018.

3 Q And does Glacier Seattle/Duwamish ready-mix plant fall
4 under your jurisdiction?

5 A Yes.

6 Q When did the Seattle ready-mix operation come under your
7 jurisdiction?

8 A January of 2018.

9 Q And what job did you hold prior to that?

10 A Director of Aggregate.

11 Q So -- and as Director of Aggregate, did ready-mix fall
12 under your jurisdiction at that point?

13 A No.

14 Q Do your current job duties involve labor relations in any
15 way?

16 A Yes, they do.

17 Q How does your job involve labor relations?

18 A I've been involved in negotiations. I get involved with
19 the Union when there's employee discipline or different things.

20 Q And do you get involved at handling grievances at your
21 level?

22 A Yes.

23 Q And what Unions do you currently have responsibility over
24 in your job as vice president?

25 A We have operating engineers in both Pierce and King



1 counties, Teamster contracts with 313, 174, and laborers in
2 King County.

3 Q I'm sorry, and laborers what?

4 A In King County.

5 Q We're going to hand you a packet documents that's been
6 marked as Joint Number 2.

7 MS. CHEREM: An extra copy would be great because I, like,
8 donated my copy.

9 Q BY MR. PAYNE: Let me call your attention to a series
10 of letters about five pages from the back that start with, to
11 Byron (sic throughout) Schwartz, from Scott Nicholson.

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20 A Okay.

21 Q Are you with me?

22 A Yes.

23 Q Okay. And can you take a look at each of these, starting
24 with Bryan Schwartz, Mike Sparrow, Eric Stiverson, Glen
25 Whitson, and James Witham.

- 1 A Okay.
- 2 Q Have you had a chance to look at those?
- 3 A Yes, I have.
- 4 Q Okay. These all say that please be advised that
- 5 CalPortland has decided to withdraw your warning letter dated
- 6 August 28th for other gross misconduct and poor performance.
- 7 Did you send those letters?
- 8 A I did.
- 9 Q And are those signed by you?
- 10 A Yes. That's my initials next to them.
- 11 Q Did you in fact issue those withdrawal letters?
- 12 A Yes.
- 13 Q Are these accurate copies of your withdrawal letters?
- 14 A They are.
- 15 Q Let's talk about these for a moment now. Were copies of
- 16 these unions -- these letters sent to anyone?
- 17 A Yes. Michael Walker at Local 174.
- 18 Q And what about the drivers themselves?
- 19 A Yeah, they were sent to their homes.
- 20 Q Pardon me?
- 21 A Yes they were sent to the drivers.
- 22 Q And -- and how do you know that?
- 23 A I asked them to be sent by HR, Kim Brook.
- 24 Q Okay. And what did you ask her to do?
- 25 A Just simply to send these to the drivers' homes and copy

1 Mike Walker.

2 Q Okay. And let's talk about this -- these letters for a
3 moment. Can you tell us why you decided to withdraw these
4 warning letters that are listed in the last five pages of this
5 document?

6 A Well, I -- I always been a relationship builder to the
7 employees, and I thought this would be something that would be
8 good for that. You know, kind of -- they were quite old and
9 just to have a clean slate.

10 Q Okay. Did you believe when you withdrew them that the
11 warning letters weren't warranted?

12 A No. From what I knew about the situation, I do believe
13 they were warranted.

14 Q Okay. And who made the decisions to withdraw these
15 warnings letters that are listed in JX-2 that we've been
16 referring to?

17 A I did.

18 Q Okay.

19 MR. MCCASKEY: And just for the point of clarification,
20 Your Honor, which pages are you referring to?

21 MR. PAYNE: Unfortunately, these don't have page numbers,
22 I don't believe. So --

23 MR. MCCASKEY: Are -- are these the letters -- just the
24 letters from -- from Scott Nicholson?

25 MR. PAYNE: From Scott Nicholson to the employees that

1 were dated April --

2 MR. MERRITT: Would you like me to read the page numbers
3 into the record? Would that help?

4 MR. MCCASKEY: No it --

5 MR. PAYNE: Okay.

6 MR. MCCASKEY: Yep.

7 Q BY MR. PAYNE: I'm going to hand you a packet labeled
8 Joint Exhibit 3. I'm going to ask you to take a look at the
9 letters that are in there. And starting with the page that
10 says, Employee Letters, August 23rd, 2017, Discipline
11 Withdrawing. Do you see that page? It's about halfway into
12 the document.

13 A Employee letters withdrawing August 23rd, yes.

14 Q Yeah. Okay. There's a series of letters that follow that
15 particular cover page. Starting with Allen -- Eric Allen and
16 Treabeau Baldridge and so on. Do you recognize those letters?

17 A I do.

18 Q Can you tell me who wrote those letters?

19 A I did.

20 Q And can you tell me whether they were distributed in any
21 manner?

22 A Yes. They were -- they were sent to the employees, and
23 copies were sent to Michael Walker.

24 Q Okay. And how do you know they were sent to the
25 employees?

1 A Again, I asked Kim Brook, our HR manager to do so.

2 Q Do you have any reason to believe she didn't do so?

3 A No. I believe she did.

4 Q Okay. And can you tell me why you withdrew these warning
5 letters which were for the failure to report to work on
6 Saturday, August 19th?

7 A I -- again -- they were quite old. And as I stated, I was
8 a relationship builder and I thought it'd be good to see a
9 clean slate.

10 Q Okay. And is this an accurate group of letters that you
11 withdrew on April 29th, 2020?

12 A Yes, they are.

13 Q Did you have any reason to believe in withdrawing these
14 letters that they were not warranted?

15 A No. From what I understand, they were warranted for
16 failure to report to work.

17 Q Okay. I'm going to hand you a series of documents. Can
18 you take a moment and look --

19 MR. PAYNE: We'd ask this to be marked as Respondent 16.

20 **(Respondent Exhibit Number 16 Marked for Identification)**

21 Q BY MR. PAYNE: Can you take a moment and look at these
22 documents?

23 A Okay.

24 Q Have you done so?

25 A Yes.

1 Q First of all, can you identify them, tell us what they
2 are?

3 A These are written warnings on two drivers for failure to
4 report at their assigned start time.

5 Q Okay. And were these -- are these warnings dated
6 somewhere on them, to your knowledge?

7 A Yeah each one has an incident date.

8 Q And where -- where can we find that date?

9 A In the upper right-hand corner.

10 Q And where are these documents kept at your company?

11 A Our HR department has secured files for all of these types
12 of things.

13 Q When you say these types of things, what are you referring
14 to?

15 A Employee files.

16 Q Okay. And discipline is kept in employee files?

17 A It is.

18 Q Okay. And did anyone assist you again in procuring and
19 pulling these documents.

20 A Yeah. Peggy Evans, our HR manager.

21 Q Okay. And did she in fact -- is she the person who -- who
22 procured these for you?

23 A Yes.

24 Q Okay. Let's walk through these real quickly. The first
25 one was written to an employee named Jeff Harris. Do you know

1 who Jeff Harris is?

2 A I do.

3 Q Who is he?

4 A He was a past employee at our -- a driver at our Kenmore
5 facility.

6 Q Is he a 174 driver?

7 A Yes.

8 Q Okay. And it states that, I'm looking at the first full
9 paragraph, "However on May 2nd you failed to report for work at
10 your assigned start time. You did not give a justifiable
11 reason for your absence, and thus were not excused." Lower
12 left-hand corner, do you -- do you know who this supervisor is
13 who wrote this letter?

14 A I believe that's Sean Fant's signature.

15 Q And who is he?

16 A He was the -- the plant superintendent at this time at
17 Kenmore.

18 Q And do you know whether in fact this document was kept in
19 the ordinary course of business?

20 A Yes.

21 Q Okay. And it also says refused to sign, did you -- do you
22 know who wrote that in?

23 A I would assume that Sean Fant wrote that in.

24 Q Okay. Let's look at page 2 now of this exhibit. Upper
25 left-hand corner, do you know who the employee is?

- 1 A Yes, it's one of our 174 drivers.
- 2 Q And that's David Bashart?
- 3 A Boshart.
- 4 Q Okay. And can you tell when this letter was issued?
- 5 A In June of 2015. June 27th.
- 6 Q And can you tell who signed it in the lower left-hand
- 7 corner?
- 8 A Brent Nordyke.
- 9 Q And you've seen his signature before?
- 10 A Yes I have.
- 11 Q Okay. And this letter also states that, "You were
- 12 notified you would have a start time for Saturday, June 27th.
- 13 However, on June 27th you failed to report for work at your
- 14 assigned start time." That was the basis for the letter?
- 15 A Yes.
- 16 Q And is this letter kept in the ordinary place of business
- 17 at your company?
- 18 A It is.
- 19 Q Okay. Let's now look at page 3 of this exhibit. Are you
- 20 with me?
- 21 A Yep.
- 22 Q Upper left-hand corner. Can you tell me who Rodney
- 23 Martinez is?
- 24 A Yes, a 174 Driver.
- 25 Q Ready-mix driver?

1 A Yes.

2 Q Okay. And lower left-hand corner, do you know who signed
3 it?

4 A Brent Nordyke.

5 Q And signature above?

6 A It appears to be the employee's. It's hard to read. It's
7 not very legible, but I'm assuming it's Rodney's.

8 Q Okay. And the date in the lower right-hand corner, what
9 does that represent on a document like this?

10 A This would be the date it was issued.

11 Q Okay. And looking at now the incident itself, first full
12 paragraph, "On Friday, July 31, you were notified that you
13 would have a start time for Saturday, August 1. However, on
14 August 1 you failed to report at your assigned starting time."

15 MR. MCCASKEY: Objection, Your Honor. The record speaks
16 for itself.

17 JUDGE WEDEKIND: It's already been read. I'll overrule
18 it. Let's go.

19 MR. PAYNE: Pardon me, Your Honor?

20 JUDGE WEDEKIND: Is there a question? Go ahead.

21 Q BY MR. PAYNE: My question was, was this the reason for
22 the discipline? And do you have any reason to believe that it
23 is still in effect -- well, when I say in effect, still in your
24 files at your company?

25 A Yes --

1 MR. MCCASKEY: Objection. Compound question.

2 JUDGE WEDEKIND: Yeah. Was a discipline issued for that?

3 THE WITNESS: Yes.

4 JUDGE WEDEKIND: Is it still in the files?

5 Q BY MR. PAYNE: Is it still in the files?

6 A Yes.

7 Q Okay. And was this procured by Peggy Evans as well?

8 A It was.

9 Q Okay. We'll move admit -- we'll move for the admission of
10 R16.

11 JUDGE WEDEKIND: Any objection?

12 MR. MCCASKEY: No objection, Your Honor.

13 MR. BERGER: No objection from the Charging Party.

14 JUDGE WEDEKIND: It's received.

15 **(Respondent Exhibit Number 16 Received into Evidence)**

16 Q BY MR. PAYNE: I'm going to hand you another small stack
17 of documents.

18 MS. CHEREM: What was the prior one marked as?

19 JUDGE WEDEKIND: 16.

20 MS. CHEREM: 16.

21 JUDGE WEDEKIND: There is no 11 to 15, right?

22 MR. PAYNE: I'm sorry?

23 JUDGE WEDEKIND: There is no 11 to 15?

24 MR. MERRITT: Not at this time.

25 MR. PAYNE: This is 17, is that correct?

1 MR. MERRITT: Correct.

2 MR. PAYNE: Okay.

3 Q BY MR. PAYNE: Can you take a moment and read through
4 these documents?

5 A Okay.

6 Q Have you read them -- have you -- have you reviewed them?

7 A Yes I have.

8 Q Okay. Let's start with the first one. Do you recognize
9 what that document is?

10 A Yes. It's a written warning made to Brian Wilcox.

11 Q And who is Brian Wilcox?

12 A A 174 driver.

13 Q Okay. And you recognize the signature in the lower left-
14 hand corner?

15 A Yeah. It's Brent Nordyke.

16 Q And what date was this document issued?

17 A This document was issued on April 19th, 2016.

18 Q Did you ask anyone in your office to procure this
19 document?

20 A I did.

21 Q Who'd you ask?

22 A Peggy Evans.

23 Q And where does she keep this document?

24 A In the secured HR files.

25 Q Okay. It refers to, on the first main para -- the first

1 full paragraph, it says, the second sentence says, "Shortly
2 after leaving the yard, your truck began spilling concrete out
3 of the back of the shoot onto East Marginal". And was that the
4 basis of the warning letter to your knowledge?

5 A Yes, it is.

6 Q Okay. And was this warning letter in fact issued based on
7 your files?

8 A Yes, I believe it was.

9 Q Okay. Let's go to page 2 of this exhibit, now. Do you
10 recognize the name of the recipient of this document?

11 A Yes. Brian Wilcox.

12 Q I'm sorry?

13 A Brian Wilcox, yeah.

14 Q Okay. And what kind of document is it?

15 A It's a written warning.

16 Q Okay. And you recognize the name in the lower left-hand
17 corner?

18 A The supervisor Brent Nordyke.

19 Q And when was it issued?

20 A On April 28th of 2015.

21 Q Okay. Let me call your attention now to pa -- to the
22 main -- well, the first main paragraph. It has a sentence that
23 reads --

24 MR. MCCASKEY: I'm going to object, Your Honor. The
25 record speaks for itself.

1 JUDGE WEDEKIND: You're just asking him to read it?

2 MR. PAYNE: Yeah I'm asking -- I'm directing his attention
3 to the document.

4 JUDGE WEDEKIND: Okay.

5 Q BY MR. PAYNE: Have you had a chance to look at it? It
6 starts with, "You became distracted". Do you see that?

7 A Yes.

8 Q Okay. Distracted by the powder truck. What's a powder
9 truck?

10 A That would have been a cement bulk hauler coming to our
11 plant, I'm assuming.

12 Q Okay. And then it says, "In making sure clear of him, and
13 proceeded to lose track of your drum". What does that -- what
14 is your understanding of what that means?

15 A He lost track of the direction of the -- the drum on his
16 mixer truck.

17 Q And what -- what's the significance of that?

18 A One direction will keep the concrete in the truck and mix
19 it, the other direction will discharge the concrete.

20 Q So what happened, based on your knowledge of this warning?

21 A It looks that he put this into slow discharge, and so it
22 started discharging concrete.

23 Q Okay. And was this warning letter in fact issued to Brian
24 Wilcox based on your company's files?

25 A Yes.

- 1 Q And did Peggy Evans procure this letter?
- 2 A She did.
- 3 Q And lastly, let's go to the last letter. Fred Lorandau.
- 4 Do you know who he is?
- 5 A Yes.
- 6 Q And who is he?
- 7 A He was a driver for us.
- 8 Q What a --
- 9 A A ready-mix driver.
- 10 Q For what -- and who's he represented by?
- 11 A Local 174.
- 12 Q Okay. And do you recognize the signature in the lower
- 13 left-hand corner?
- 14 A Yes. Brent Nordyke.
- 15 Q And can you tell the date this was issued on?
- 16 A It looks to be December 5th, 2014.
- 17 Q Okay. Let me call your attention now to the first
- 18 sentence in the main body of the letter and ask you to review
- 19 it. Can you review it please?
- 20 A Um-hum.
- 21 Q Have you done so?
- 22 A Yes I have.
- 23 Q Okay. Let me ask you again. What -- what's your
- 24 understanding of what took place that led to this warning
- 25 letter?

1 A It appears that his drum was put into discharge and
2 spilled concrete onto 1st Avenue.

3 Q Okay. And when you say drum put into discharge, what does
4 that mean?

5 A It was placed into the discharge rotation, so the concrete
6 was being discharged from the truck.

7 Q So when the drum rolls one way, it mixes. And when it
8 rolls the other way, it starts to discharge?

9 A Correct.

10 Q Okay. What part of the roll do the pins play in the mix?

11 A The pins help mix the concrete, yes --

12 Q Okay.

13 A -- and retain it in the drum.

14 Q And is this third page to Fred Lorandean kept in the
15 ordinary place of business?

16 A Yes.

17 MR. PAYNE: We'll move for the admission of Respondent's
18 17.

19 MR. BERGER: Objection. Object to relevance. There's no
20 suggestion -- all of these three have to do with spilling of
21 concrete. There's been no testimony that any of the drivers
22 were disciplined for spilling concrete.

23 JUDGE WEDEKIND: I'll leave that for argument in your
24 briefs, okay? They apparently think it's -- is that your
25 position, that it's somewhat related --

1 MR. PAYNE: Careless handling of materials.

2 JUDGE WEDEKIND: Okay. So that's overruled. Any other
3 objections?

4 MR. MCCASKEY: Yes, Your Honor. I'd like to object on
5 relevance grounds as far as the standard. Really what we're
6 looking at is whether the employees lost the protection of the
7 Act. So, you know, what other employees did in 2014 is not
8 relevant.

9 MR. PAYNE: Your Honor, there's no Wright Line issue on
10 the 16 warning letters that were actually ultimately withdrawn.

11 JUDGE WEDEKIND: Right. So --

12 MR. PAYNE: So --

13 JUDGE WEDEKIND: -- what is the relevance of this? I
14 guess this is the -- R-16, the prior exhibit, that was not
15 reporting to work. So I think that was more related to the mat
16 pour, right?

17 MR. PAYNE: That's correct, Your Honor.

18 JUDGE WEDEKIND: But this one deals with inattention and
19 negligent operation, so this appears to be more related to the
20 strike. Right?

21 MR. PAYNE: It is evidence, also, Your Honor, that Brent
22 Nordyke has been writing letters for poor performance issues as
23 well. There was a question about Brent's authority to issue
24 discipline on cross.

25 JUDGE WEDEKIND: Okay, but let's -- you said "as well" so

1 it has two purposes. One of them is related to the strike.
2 Why is it relevant to the strike allegation.

3 MR. PAYNE: Let me have just a moment --

4 JUDGE WEDEKIND: Sure.

5 MR. PAYNE: -- to confer.

6 JUDGE WEDEKIND: Off the record.

7 (Off the record at 1:22 p.m.)

8 JUDGE WEDEKIND: All right.

9 MR. PAYNE: Your Honor, we'll agree to withdraw our R-17.

10 JUDGE WEDEKIND: Okay. It's withdrawn. Thank you.

11 **(Respondent Exhibit Number 17 Withdrawn)**

12 MR. PAYNE: No further questions of this witness.

13 JUDGE WEDEKIND: Any cross?

14 MR. MCCASKEY: Your Honor, if I could just have a few
15 minutes.

16 JUDGE WEDEKIND: Sure. Off the record.

17 (Off the record at 1:25 p.m.)

18 JUDGE WEDEKIND: All right, cross?

19 **CROSS-EXAMINATION**

20 Q BY MR. MCCASKEY: Good afternoon, Mr. Nicholson. My name
21 is David McCaskey. I work for the counsel -- for the General
22 Counsel. I'm going to ask you a few questions related to what
23 you were asked about on direct. So remind me of when you
24 started working at your current position as vice
25 president/general manager of Washington?

1 A January of 2018.

2 Q And the remaining August 11th disciplines, and August 19th
3 disciplines, those were on the books when you started that
4 role, correct?

5 A Yes.

6 Q And you decided to -- in your testimony you stated, you
7 decided to withdraw the disciplines because you wanted a clean
8 slate. Isn't that right?

9 A Yes, I did say that.

10 Q And you did that in April 2020, right?

11 A Yeah, I think that's the date.

12 Q So beyond these recission letters, you didn't have any
13 other communications with drivers about withdrawals of those
14 disciplines, did you?

15 A No, I did not talk to the drivers directly about
16 withdrawing them. Just the letters.

17 MR. MCCASKEY: Nothing further, Your Honor.

18 JUDGE WEDEKIND: Anything from the Union?

19 MR. BERGER: Yeah, a few questions. You want to give me
20 one moment? Okay. I'm ready.

21 **CROSS-EXAMINATION**

22 Q BY MR. BERGER: Good afternoon, Mr. Nicholson. I'm Ben
23 Berger, counsel for the Charging Party, Local Teamsters Local
24 174. For the recission letters related to the events of August
25 11th of 2017, are you -- you don't personally know whether the



1 drivers received those letters, correct?

2 A The -- the letters that I asked HR to send to them?

3 Q Correct.

4 A I believe they did based on the -- I was told they were
5 sent, yes.

6 Q I know. But my question is do you have personal awareness
7 of whether they were received and reviewed by the drivers?

8 A I -- I do not.

9 Q Okay. And the same question for the recission letters
10 connected to the August 19th events. You don't personally know
11 whether the drivers received and viewed the letters, right?

12 A I know they were sent to the homes.

13 Q Okay. But to answer my question, you don't know if they
14 received them, correct?

15 A Correct.

16 Q And you were asked a moment ago by counsel for the General
17 Counsel about other communications about the letters. But
18 beyond the discussion of the letters, did you have any other
19 communications with any Local 174 represented drivers about the
20 events of August 11th, 2017?

21 A No.

22 Q Any other communications with them about the events of
23 August 19th, 2017?

24 A No.

25 Q I want to point your attention -- do you still have

1 Respondent's Exhibit 16 in front of you?

2 A What was that?

3 Q That was the first set of corrective action forms that we
4 looked at.

5 A Okay, the small stack with three in them.

6 Q That's -- that's right.

7 A Yes.

8 Q The first name on the first page is employee Jeff Harris,
9 and I'll take this each page at a time. For Mr. Harris, do you
10 know -- well, first, let me direct your attention to the first
11 paragraph. The second sentence says, "You did not give a
12 justifiable reason for your absence". It goes on. Do you know
13 what reason, if any, Mr. Harris gave for not making his start
14 time on Saturday, May 2nd?

15 A I do not. I know it was in the letter.

16 Q And turning to page 2, Mr. Boshart. First paragraph,
17 second sec -- second sentence said, "You failed to report for
18 your assigned start time". Do you know what reason, if any,
19 Mr. Boshart gave for failing to report?

20 MR. PAYNE: Objection. Assumes facts not in evidence.

21 MR. BERGER: I asked what, if any, reason.

22 JUDGE WEDEKIND: Does it say he gave a reason?

23 MR. BERGER: In the letter it does not. Do you know if he
24 gave a reason? Can I ask it that way?

25 JUDGE WEDEKIND: That would be better.

1 MR. BERGER: Okay.

2 Q BY MR. BERGER: Mr. Nicholson, do you know if Mr. Boshart
3 gave a reason for not reporting for his start time on Saturday,
4 June 27th?

5 A I do not.

6 Q Turn to the third page, and take a look at the second
7 sentence of the first paragraph. It's related to Mr. Rodney
8 Martinez. It says, "On August 1st you failed to report for
9 work at your assigned start time". Do you know if Mr. Martinez
10 gave a reason for not reporting to work that day?

11 A I do not.

12 Q It's true there was no strike or work stoppage by
13 Teamsters Local 174 members in -- at any point in 2015,
14 correct?

15 A Not that I'm aware of.

16 MR. BERGER: No further questions.

17 JUDGE WEDEKIND: Any redirect?

18 MR. PAYNE: Nothing, Your Honor.

19 JUDGE WEDEKIND: All right. Thank you.

20 THE WITNESS: Thank you sir.

21 JUDGE WEDEKIND: You may step down. Watch your step,
22 please.

23 MR. LUNDGREN: In just a few minutes I'm going to go get
24 the other witness.

25 JUDGE WEDEKIND: Sure. Let's go off the record from that.



1 (Off the record at 1:36 p.m.)

2 JUDGE WEDEKIND: Respondent, would you call your next
3 witness?

4 MR. LUNDGREN: Respondent calls Rob Johnson.

5 JUDGE WEDEKIND: All right. Mr. Johnson, if you would,
6 just please state your name and spell it for us for the record.

7 THE WITNESS: Rob Johnson. R-O-B J-O-H-N-S-O-N.

8 JUDGE WEDEKIND: Thank you very much. If you'd raise your
9 right hand, I'll swear you in.
10 Whereupon,

11 **ROB JOHNSON**

12 having been duly sworn, was called as a witness herein and was
13 examined and testified as follows:

14 THE WITNESS: Yes I do.

15 JUDGE WEDEKIND: Thank you very much. Counsel?

16 **DIRECT EXAMINATION**

17 Q BY MR. LUNDGREN: Mr. Johnson, where are you currently
18 employed?

19 A I'm retired.

20 Q When did you retire?

21 A December 31st of 2018.

22 Q And where did you work prior to your retirement?

23 A Cadman Ready-Mix.

24 Q And how long did you work for Cadman Ready-Mix?

25 A 31 years total. Part of that was for Tilbury Cement but

1 it was all part of the same corporation. They just had a name
2 change in '87 or '90 it was.

3 Q And what -- what business was Cadman Ready-Mix in?

4 A Ready-mix, aggregate, and currently asphalt as well.

5 Q Where did you work for Cadman?

6 A I was strictly involved in ready-mix operations.

7 Q And what geographic area, if any?

8 A Puget Sound area. So we had plants as far south as Black
9 Diamond and as far north as Everett. And I covered the Seattle
10 and the east side of the Redmond area.

11 Q And what was your -- let me ask you this; what familiarity
12 do you have with Glacier Northwest?

13 A I mean, obviously a competitor in the markets that we
14 serve, but also coordinated bargaining whenever we have labor
15 negotiations with any of the -- the unions, the operators,
16 machinists, Teamsters.

17 Q Okay, let's focus on the Teamsters. What does -- the
18 coordinated bargaining you're describing with the Teamsters,
19 can you describe what that process?

20 A Yeah, it's basically the four companies: Salmon Bay,
21 CalPortland, Stoneway, and Cadman would sit down with
22 representatives from all four companies and negotiate the --
23 the labor agreements. Sometimes they were three-year
24 agreements, sometimes four, depending on basically, you
25 know, -- at -- at expiration we would sit down and -- and

1 negotiate an agreement because they were very similar in a lot
2 of ways.

3 Q And have you ever heard the -- the name Lehigh before?

4 A Yes.

5 Q And -- and who's that?

6 A Lehigh basically is our cement side for our operations.
7 So we did have another contract with the Teamsters, which was
8 for our cement workers.

9 Q When you say, "our cement workers", are you referring to
10 Cadman?

11 A Yeah. Lehigh and Cadman were part of the same company,
12 and so that was basically an additional labor agreement that
13 was established to -- a few years back.

14 Q What labor relations duties did you have at Cadman in --
15 in 2017?

16 A 2017, basically I represented Cadman for the labor
17 negotiations with the Teamsters and in a coordinated fashion
18 with, you know, basically Glacier, Salmon Bay, Stoneway, and
19 Cadman.

20 Q And how many unions were involved in that negotiation?

21 A Just the Teamsters in the -- in that negotiation.

22 Q And what was your title then?

23 A Vice-President of Ready Mix.

24 Q And over the course of your career, what familiarity do
25 you have generally with unionized labor?

1 A Basically I -- the whole time I was there, it was
2 unionized labor for all of our mechanics, operators, drivers,
3 QC was added at one point, as was the cement workers for
4 Lehigh.

5 Q And describe your familiarity with Teamsters Local 174
6 through your duties.

7 A I was involved with Local 174 with not only labor
8 negotiations but grievance procedures and that type of thing,
9 probably for the last 25 years of my 31 years with Cadman.

10 Q There's been testimony about a King County Teamster strike
11 that started on August 11th, 2017. Where were you that day?

12 A I would have been in my office in Redmond.

13 Q How, if at all, did that August 2017 strike affect Cadman?

14 MS. CHEREM: Objection. Relevance.

15 JUDGE WEDEKIND: We're going to find out.

16 MR. LUNDGREN: It's -- it's generally backdrop to what I'm
17 leading up to, but that he was -- he knew what happened. He
18 was at the bargaining. And he understood what was going on.

19 JUDGE WEDEKIND: Well, let's see where it goes.

20 Overruled. Want to start again?

21 MR. LUNDGREN: Sure.

22 Q BY MR. LUNDGREN: How, if at all, did that August 2017
23 strike affect Cadman as part of the bargaining?

24 A Well, since we were involved in coordinative bargaining
25 and the communication between the different companies was, you

1 know, on the negotiation piece, was very current. So we heard
2 right away that there was, you know, a labor dispute at
3 Glacier's operations in Seattle.

4 Q Do you recall in the course of your participation in the
5 bargaining when the Teamster drivers authorized the strike?

6 A Typically, it's done before expiration, so I don't know
7 the exact date but I would have assumed that it would have been
8 before the August 1st expiration date.

9 Q And when the Teamsters authorized the strike in 2017, how
10 did that apply to the -- for concrete companies that were
11 bargaining with the Teamsters --

12 MS. CHEREM: Objection.

13 Q -- do you know?

14 MS. CHEREM: Again, Your Honor, relevance. And -- we seem
15 to be -- I'm -- I'm waiting to hear from the tide to the -- for
16 the 174 drivers represented that are employed at -- by the
17 Respondent.

18 JUDGE WEDEKIND: Would you mind just giving us a brief
19 summary of the relevancy because --

20 MR. LUNDGREN: Sure, Your Honor. The Union -- the Union
21 has -- has raised --

22 JUDGE WEDEKIND: Should the witness --

23 MR. LUNDGREN: What's that?

24 JUDGE WEDEKIND: Should the witness leave the room first,
25 or do you think it's probably fine?

1 MR. LUNDGREN: Well, if you want him to. I mean the
2 Union's raised the issue. First of all, they put in the notice
3 to strike issue. Then they raised the issue that, you know,
4 did you know when they were going to strike? Did you know who
5 would be struck? And we're putting on a very short witness who
6 was at the bargaining table, has no dog in the fight, who
7 will -- who will answer those questions about what was known.

8 JUDGE WEDEKIND: Um-hum.

9 MS. CHEREM: But again, I think the issue is what was
10 known by Respondent and not what was known by Cadman.

11 JUDGE WEDEKIND: In the coordinated bargaining, were you
12 all in the room together during every meeting? All the
13 representatives of all four?

14 THE WITNESS: Yes, Your Honor. There was always
15 representatives from all four companies.

16 JUDGE WEDEKIND: Okay. Is that what you're going to ask
17 him, about what happened at the bargaining table?

18 MR. LUNDGREN: I'm going to ask him what -- what was known
19 from those present at the bargaining table, which was members
20 from Glacier Northwest and everybody.

21 JUDGE WEDEKIND: What was known but based on, I mean --

22 MS. CHEREM: But based on -- is it on the report?

23 MR. LUNDGREN: Based on their knowledge as being the ones
24 who were -- who were bargaining with the Teamsters. The
25 ratification vote was also all forthcoming.

1 MS. CHEREM: Well, I think that's a separate question.
2 Like was he testifying to something said at the bargaining
3 table or?

4 JUDGE WEDEKIND: I'm going -- I'm going to let it -- let
5 the testimony go forward based on his representation that it's
6 going to be very quick, --

7 MR. LUNDGREN: It is.

8 JUDGE WEDEKIND: -- very short.

9 MR. LUNDGREN: And we're -- and we're responding -- we're
10 responding to theories that are not our own.

11 JUDGE WEDEKIND: You can argue about it in the brief.
12 Let's proceed.

13 Q BY MR. LUNDGREN: And did you have an understanding of who
14 that strike authorization applied to, with respect to the
15 companies at the bargaining table?

16 A Well, the strike authorization could have been any --
17 could have been for any of the four companies.

18 JUDGE WEDEKIND: Can I back up? Did you hear about a
19 strike authorization vote in 2017?

20 THE WITNESS: Oh I was -- yes, I'm sure we -- we knew
21 clearly before expiration that they had a authorization vote
22 from the members.

23 JUDGE WEDEKIND: Thank you.

24 Q BY MR. LUNDGREN: And at any time prior to the strike on
25 August 11th, what knowledge did you have about which companies

1 would be struck?

2 A None.

3 Q At any time prior to the strike, what knowledge did you
4 have about when the strike would start?

5 A None.

6 Q Was that anything that was known on your side of the
7 bargaining table at that time?

8 A No.

9 Q And what strike preparations did Cadman take at that time?

10 MS. CHEREM: Objection. Relevance.

11 JUDGE WEDEKIND: Overruled. Proceed.

12 Q BY MR. LUNDGREN: Basically, I mean, you know, we had been
13 in strike situations before. So I mean we had reached out to
14 security and other things, but just -- just some housekeeping
15 as far as how we would handle it, what we would do if there was
16 a strike situation. So not a lot of preparation other than
17 maybe what would we do security wise if we had to secure our
18 sites.

19 Q From the employer side, was there an expectation that a
20 strike would -- would happen?

21 A No.

22 Q Did Cadman go out and acquire equipment in anticipation --

23 MS. CHEREM: Objection.

24 Q -- of a strike?

25 MS. CHEREM: Objection. Relevance.

1 JUDGE WEDEKIND: Overruled. Go ahead.

2 A No we did not acquire any additional equipment of any
3 kind.

4 Q BY MR. LUNDGREN: In 2017, what on-site reclaimer capacity
5 did Cadman have?

6 MS. CHEREM: Objection. Relevance.

7 JUDGE WEDEKIND: Okay. Now, we're really -- so how far
8 are we going to go with this?

9 MR. LUNDGREN: Oh, I have about five more questions.

10 JUDGE WEDEKIND: Okay.

11 MR. LUNDGREN: And the reclaimer issue again is not our
12 theory.

13 JUDGE WEDEKIND: Okay.

14 MR. LUNDGREN: The first week, the Union raised this
15 theory that they, you know, should have went to Home Depot and
16 bought reclaimers.

17 MS. CHEREM: But the Union was --

18 JUDGE WEDEKIND: Right.

19 MR. LUNDGREN: And so I'm making a short record about it,
20 Your Honor, but I'm not going to make a big deal out of it.

21 JUDGE WEDEKIND: The problem is if you open the -- open
22 the door to that the other side has an opportunity to present
23 counter-evidence. And do we really want to extend the hearing
24 by having a discussion and -- and testimony and evidence about
25 what happened to Cadman? That's the problem.

1 MR. LUNDGREN: Well, it -- the -- in my mind, the
2 reclaimer argument that was raised from the other side is the
3 problem. But --if -- if you give me one minute, let me have a
4 short conversation with co-counsel --

5 JUDGE WEDEKIND: Sure.

6 MS. CHEREM: Your Honor, before we go off -- before we go
7 off the record, I just want to clarify; I don't -- my
8 recollection of the hearing was that the Union did not at any
9 point raise Cadman's reclaimer capacity as part of any
10 argument.

11 MR. LUNDGREN: But a reclaimer is an industry thing, and
12 they're -- they're saying the Employer should have took
13 reasonable --

14 JUDGE WEDEKIND: Right.

15 MR. LUNDGREN: -- precaution to anticipate --

16 JUDGE WEDEKIND: Um-hum.

17 MR. LUNDGREN: -- our intentional destruction of their
18 batch concrete by building on a mass of \$1,000,000 capital
19 improvement on a environmentally sensitive piece of property
20 next to the Duwamish River.

21 JUDGE WEDEKIND: But you've already put on --

22 MR. LUNDGREN: I know.

23 JUDGE WEDEKIND: -- I think they told me about that. And
24 they haven't rebutted it.

25 MR. LUNDGREN: Okay. So let me get -- let me have a short

1 break, Your Honor.

2 JUDGE WEDEKIND: Okay. Off the record. I mean they
3 haven't rebutted that it would cost them \$1,000,000 or
4 anything, as far as I know.

5 MR. LUNDGREN: Okay.

6 JUDGE WEDEKIND: Right?

7 (Off the record at 1:51 p.m.)

8 JUDGE WEDEKIND: Go ahead.

9 MR. LUNDGREN: I have no further questions for this
10 witness, Your Honor.

11 JUDGE WEDEKIND: Okay. Any cross?

12 MS. CHEREM: Give me just a moment. I don't think so, but
13 I want to confirm.

14 JUDGE WEDEKIND: Sure. We're off the record.

15 (Off the record at 1:53 p.m.)

16 JUDGE WEDEKIND: Cross?

17 MS. CHEREM: No questions, Your Honor.

18 JUDGE WEDEKIND: How about from the Union?

19 MR. BERGER: Yes.

20 **CROSS-EXAMINATION**

21 Q BY MR. BERGER: Good afternoon, Mr. Johnson. I'm Ben
22 Berger. I'm the counsel for Teamsters Local 174. A few
23 follow-up questions about your testimony. Who were the other
24 representatives of the sand and gravel companies who were, I
25 think you used the term, in the bargaining room with you?

1 A So who was there representing the four companies?

2 Q Correct.

3 A Paul Green was there for Salmon Bay. Greg McKinnon was
4 there from Stoneway. I was there. Mark Epstein, which is also
5 with Lehigh, was there. And then there was Brian Sleeper and
6 several other representatives from Glacier.

7 Q And isn't it true that Glacier officers shared with you --
8 with you their belief that they were going to be struck the
9 week of August 12th?

10 A I couldn't say that I -- I didn't recall that at all.

11 Q Did you ever receive or send emails with those
12 representatives of the other companies speculating which
13 company might be struck and when in August 2017?

14 A Not to my knowledge.

15 Q I'm going to show you what's been marked as General
16 Counsel 13.

17 MR. BERGER: May I approach?

18 JUDGE WEDEKIND: Yes.

19 Q BY MR. BERGER: Read the first page and let me know when
20 you're finished.

21 A You just want me to read the first page, just the front?

22 Q Yeah. There's -- there appear to be exchanges. If you
23 could read the top two from Justin Denison and Paul Nerdrum.

24 A Okay. Yeah, I see those.

25 Q Okay. And you see in the email with the from line, Justin

1 Dennison, below that on the CC line, your name is listed,
2 correct?

3 A Okay. Yeah.

4 Q Would you agree you received that email?

5 A I have to assume that I did.

6 Q Okay. And similarly the email below that from Paul
7 Nerdrum, you're also on the CC line.

8 A Correct.

9 Q Does that refresh your recollection about whether sand and
10 gravenal -- gravel representatives exchanged speculation about
11 which company might be struck?

12 A It may be. I mean, I don't know the exact dates that we
13 sat in coordinated fashion. I mean there was probably some
14 discussion of speculating who might get, you know, but I can
15 tell you I always felt that it was any of the four companies or
16 all of us could have been struck at any time. So -- and
17 really, I really don't -- I mean, sure, maybe there's something
18 to speculation in somebody's feelings, but I sure never
19 anticipated that any one company might be singled out. And for
20 all I knew, typically all four would be taken out at the same
21 time.

22 Q Okay. Do you recall whether Cadman had a mat pour
23 scheduled for that week of August 9th, 2017?

24 A I don't recall that we had a mat pour scheduled, no.

25 Q If Cadman had scheduled a mat pour for that week and --

1 and you personally had reason to believe, or in fact did
2 believe, that you might be struck the day of the mat pour,
3 what, if any, steps would you take to mitigate the risk.

4 MR. LUNDGREN: Objection. Speculation.

5 MR. BERGER: Well, they opened the door to this, I think.

6 MR. LUNDGREN: I never asked him about mat pours.

7 MR. BERGER: You opened -- there was a whole line of
8 inquiry about what more knowledge they had. He was part of the
9 conversation where Mr. Dennison specifically speculated about
10 this. I think it's a fair question.

11 JUDGE WEDEKIND: Well, he said he did not have one, to his
12 recollection, so.

13 MR. LUNDGREN: And he -- and he confirmed that he didn't
14 know when they were going to strike or who they were going to
15 strike.

16 MR. BERGER: I mean the entire nature of the inquiry was
17 about what preparations they took, what -- you know the
18 capacity of Cadman. And so I think --

19 JUDGE WEDEKIND: But -- but your -- your question is
20 speculative in the sense that you're not asking him what
21 preparations he made. You're saying what if there was a mat
22 pour, which he already said, I can't recall there being one --
23 what would you have done? I'm going to sustain the objection.

24 Q BY MR. BERGER: Let me ask this, are you involved in --
25 when you were employed by Cadman -- in planning a mat pour?

1 A Oh definitely, yeah.

2 Q In your role, have -- did you ever plan to go forward with
3 a mat pour after the expiration of a Collective Bargaining
4 Agreement?

5 MR. LUNDGREN: Objection. Beyond the scope. This also
6 violates the stipulation where they agreed they're not going to
7 offer any extrinsic evidence for the lawsuit. And Mr. Johnson
8 submitted a declaration in the State Court lawsuit. And now
9 they appear to be inquiring into it, which was the whole
10 purpose of us receiving the stipulation yesterday that the
11 General Counsel and the Union would not be offering any
12 additional evidence about the claim about the State Court
13 lawsuit.

14 MR. BERGER: This is not related to that inquiry at all.
15 This is about --

16 MR. LUNDGREN: So it's not related to any of the topics --

17 MR. BERGER: Can I speak?

18 MR. LUNDGREN: -- that Mr. Johnson was called to testify
19 about today.

20 MR. BERGER: Mr. Lundgren, you spoke. Let me speak.
21 There is -- this is directly related to the reasonable
22 precautions for the August 11th. This email is dated August
23 9th, prior to the start of the strike.

24 MR. LUNDGREN: And I stopped my line of inquiry about what
25 precautions were taken because the Judge pointed out that there



1 would be no reason to go down that path.

2 JUDGE WEDEKIND: But your question's been dealt with,
3 would you schedule a mat pour after the strike? That doesn't
4 deal with reasonable precautions on 11 -- on August 11th?

5 MR. BERGER: No, no my question was the -- the contract
6 expired July 31st. So my question was, after a contract had
7 expired, but prior to the start of a strike, have you ever
8 scheduled a mat pour during the period of an expired -- when
9 the contract had expired?

10 JUDGE WEDEKIND: And let's say the answer is yes or no.
11 What would I do with that information?

12 MR. BERGER: It would be in the same way that counsel for
13 Respondent is trying to suggest that the experience of other
14 companies is reflective of what precautions the company would
15 or could take.

16 JUDGE WEDEKIND: Well, you know, I'd be happy to strike
17 that testimony.

18 MR. LUNDGREN: Well, no. I mean, that's not what I'm
19 suggesting.

20 JUDGE WEDEKIND: If that's the problem.

21 MR. LUNDGREN: What I'm -- what I'm suggesting is nobody
22 had notice of who was going to be struck and on what date,
23 which is a topic they've been exploring unsuccessfully so far.
24 And the -- I -- look, I was at the bargaining table. All the
25 companies were -- were there. Nobody knew who was going to be

1 struck or when, as Mr. Johnson said. As far as I knew, you
2 know, all four companies could be struck at any time. So we
3 don't -- I mean the -- the point is what he's inquiring about
4 is a mat pour that was never struck.

5 JUDGE WEDEKIND: I -- you know, I'm not -- I'm really just
6 not interested in what -- in what this company would have done.
7 I don't think it really adds much to what Glacier would have
8 done. I can't imagine relying on that in my decision the same
9 way I don't think I'm going to be relying on whether they
10 reached out to security. Or whether they acquired any
11 equipment. Every company, I assume, is different. I can't
12 assume that they're the same.

13 MR. BERGER: Fair enough. I have no further questions.

14 JUDGE WEDEKIND: Okay. Any redirect?

15 MR. LUNDGREN: No, Your Honor.

16 JUDGE WEDEKIND: Thank you. Thanks for your testimony.
17 All right.

18 THE WITNESS: Thank you.

19 JUDGE WEDEKIND: Managers can never retire in my
20 experience. They always get called out to testify.

21 MR. LUNDGREN: And --

22 MS. CHEREM: And enjoy your re-retirement after this
23 little stint.

24 MR. LUNDGREN: And the next witness is Melanie O'Regan.
25 We're continuing her testimony. She may be the last witness.

1 MS. CHEREM: Okay.

2 MR. LUNDGREN: But we're working on that potential --
3 potentiality.

4 JUDGE WEDEKIND: Okay.

5 MS. CHEREM: All right.

6 MR. LUNDGREN: If we could have about ten minutes. I'm
7 going to try to have Ross move that screen a little closer to
8 the witness --

9 JUDGE WEDEKIND: Okay.

10 MR. LUNDGREN: -- so we don't need to monkey with paper
11 copies.

12 JUDGE WEDEKIND: Sure, that's fine. Off the record.

13 (Off the record at 2:12 p.m.)

14 JUDGE WEDEKIND: Mr. Lundgren, would you call your next
15 witness?

16 MR. LUNDGREN: We call -- Respondent calls Melanie
17 O'Regan, and I believe she's already testified, Your Honor.

18 JUDGE WEDEKIND: Well, welcome back. You're still under
19 oath.

20 Whereupon,

21 **MELANIE O'REGAN**

22 having been previously sworn, was called as a witness herein
23 and was examined and testified as follows:

24 THE WITNESS: Yes.

25 JUDGE WEDEKIND: Okay. Thank you. Counsel.



RESUMED DIRECT EXAMINATION

1
2 Q BY MR. LUNDGREN: Now, Ms. O'Regan, I'm going to -- you've
3 already provided background testimony in this case. I'm going
4 to take you through a little bit just for interest of a clear
5 record. Where you do you currently work?

6 A I work for CalPortland in Los Angeles.

7 Q And how long have you worked for CalPortland?

8 A I came to work for CalPortland in November of 2006.

9 Q Where did you work before CalPortland?

10 A I had my own business in the same area. In Los Angeles
11 area.

12 Q What type of business was that?

13 A I was in the ready-mix concrete business.

14 Q How long in total have you been in the ready-mix concrete
15 business?

16 A Since March of 1985. So it will be 38 years.

17 Q And what led you to working for CalPortland?

18 A We were acquired.

19 Q When you say, we, who's we?

20 A It -- I was partners with the family in the ready-mix
21 business and both businesses were acquired by CalPortland.

22 Q And when was that?

23 A In November of 2006.

24 Q In August 2017, where were you working?

25 A I was up here working as the vice president/general



1 manager for the Washington Materials Division.

2 Q And do you recall your title in 2017?

3 A I was vice president/general manager.

4 Q And you said the Washington Materials Division?

5 A Of the Washington Materials Division.

6 Q Can you just generally tell us what that is?

7 A So that job is basically profit and loss responsibility
8 for the businesses that are related to ready-mix, aggregate,
9 transportation, anything ready-mix related.

10 Q And before you became vice president/general manager of
11 the Washington Materials Division, where -- where were you
12 working?

13 A I had the same title in Southern California.

14 Q And what's your current title?

15 A Vice president/general manager Southern California
16 Materials Division.

17 Q Is that a different title than what you held before you
18 came up to Seattle in 2017?

19 A No, it's the same title.

20 Q So what I want to focus on when you were in Washington.
21 How long were you working for Glacier in Washington?

22 A I started working up here for Glacier in October of 2016.
23 And I left to go back to Los Angeles on -- the end of -- of the
24 very end -- last day of December 2017.

25 Q What were your duties at Glacier in 2017?



1 A As I said, I had the profit and loss responsibility for
2 all of the businesses that were related to ready-mix.

3 Q And what responsibilities, if any, did you have over
4 Glacier's King County facilities?

5 A That was an area that I was responsible for.

6 Q In the course of your experience in the ready-mix
7 industry, what is your familiarity with unionized labor?

8 A My entire tenure in the ready-mix business, all of the
9 drivers have always been Teamsters, so I'm very familiar. And
10 we have operating engineers also, and machinists in Los
11 Angeles. And we had operators up here, too. So I'm -- I'm
12 very familiar with union shops.

13 Q And what is your familiarity with the work
14 responsibilities of a ready-mix driver?

15 A Well, I'm very familiar with the daily responsibilities of
16 a ready-mix driver.

17 Q And how are you familiar with that?

18 A 38 years makes me -- and -- and I'm very active in my
19 role. I'm very boots on the ground, in the weeds. So very
20 active in my responsibilities as the supervisor over everyone.

21 Q And in the course of your duties, what's your familiarity
22 with the product, batch concrete?

23 A I'm also very familiar with concrete. I have a very solid
24 knowledge of concrete.

25 Q And how do you have that familiarity?



1 A Just 38 years. I -- I -- I've made my own concrete. I've
2 delivered it. I've finished it. I've been very engaged in the
3 entire process of the business.

4 Q Okay. Let's shift to August 11th, 2017. There's been
5 testimony about a King County Teamsters strike that began on
6 Friday, August 11, 2017. Where were you that day?

7 A I was at the Duwamish plant that day.

8 Q And what is the Duwamish plant?

9 A Did you ask where?

10 Q What.

11 A Oh, what. The Duwamish plant is a large facility where we
12 produce a lot of concrete, a lot of drivers and trucks that are
13 parked there, and that's also where the corporate offices were.

14 Q Okay. And where is that located?

15 A At the Duwamish River at the port down that way.

16 Q Okay.

17 MR. LUNDGREN: And briefly, Ross, could you put up
18 Respondent's Exhibit 3, please?

19 MR. MERRITT: One moment.

20 Q BY MR. LUNDGREN: And Melanie, I don't know if there's a
21 yardstick --

22 A Oh, there is.

23 Q I'm sorry, Ms. O'Regan, I don't know if there's a
24 yardstick up there. Do you mind walking down and just showing
25 us on the photo where your office was in August 2017?

1 A So my office was in this building and it was on this
2 corner.

3 Q Okay. And let the record reflect, she's pointing at an L-
4 shaped building at the bottom of the photograph. And then when
5 you pointed to the corner, you pointed to the bottom right
6 corner. Is that correct?

7 A The northeast corner, perhaps.

8 Q And what's that? Is that a public road in front of the
9 building where the parking spaces are?

10 A Well, the road's here, and then the driveway's here. The
11 train tracks are here. You have to cross the train tracks
12 the -- the -- the road's here.

13 Q Got it.

14 JUDGE WEDEKIND: And there's no letter identifying that
15 building on this exhibit, right?

16 THE WITNESS: That's what they call it the L.

17 JUDGE WEDEKIND: It's an L shape.

18 Q BY MR. LUNDGREN: In August of 2017, what typical office
19 hours did you keep?

20 A I usually got in around 6:30, 6:45, and stayed until about
21 4:00, 4:30, sometimes 5:00, 5:30. It just depends on what kind
22 of day we're having.

23 Q And when you say 6:30, you're saying 6:30 a.m.?

24 A In the morning, yeah.

25 Q And 4:30, you meant p.m.?



1 A Yes.

2 Q What time-- do you remember what time you arrived the
3 morning of August --

4 A I don't remember exactly but I think it was around 6:45.

5 Q We're talking about the morning of August 11, 2017.

6 A Correct.

7 Q When you arrived, were -- what did you see?

8 A Well, when I arrived, it was business as usual.

9 Q Were there any picket lines that you could see?

10 A No.

11 Q Did you have occasion to observe the yard at the time you
12 arrived that morning?

13 A Well, I just drove in and I parked in the L park. So I
14 would come in and park back there and everybody's working. And
15 it was, you know, the same as it was the day before.

16 Q Did you have any role in bargaining with the Teamsters?

17 A I was at the bargaining table.

18 Q And who else was at the bargaining table?

19 A From Glacier? A total -- everybody?

20 Q On the employee -- I'm sorry. On the employer side, who
21 else was at the bargaining table?

22 A Brian Sleeper and Justin Denison were with CalPortland.
23 Mark Epstein was with Cadman Lehigh. Greg McKinnon was there
24 for Stoneway. Paul Nerdrum was there for Salmon Day. And I
25 think a day maybe Don Molino sat in with Stoneway.

1 Q Is there any other Cadman representative there?

2 A I don't recall. I don't know if Rob was there at every
3 one.

4 Q Who's Rob?

5 A Rob Johnson.

6 Q Okay. And at any time prior to the strike, what knowledge
7 did you have about which companies would be struck?

8 A None.

9 Q At any -- prior to this strike, what knowledge did you
10 have about when the strike would begin?

11 A None.

12 Q What certainty, if any, did you have that a strike would
13 happen?

14 A None.

15 Q Let's go back to the early morning of August 11. When did
16 you learn the strike was happening that morning?

17 A Around 7, which I think was when it was called.

18 Q And how did you learn that the strike was happening?

19 A You know, I don't recall exactly. I think Justin told me.
20 Mitt (phonetic throughout) called me to tell me, oh, we're on
21 strike.

22 Q And who's -- for the record, what's Justin's last name?

23 A Justin Denison was the operations manager for the division
24 at that time.

25 Q What communications did you have with Dispatch that

1 morning, if any?

2 A I called Adam Doyle, who was the dispatch manager, and
3 told him to get on the radio and tell the drivers to complete
4 their work and return the trucks to the yard empty, wash them
5 out, and park them.

6 Q What was the purpose of your discussion with Adam Doyle?

7 A I wanted to make sure that the trucks got returned to the
8 plant in a safe and organized manner.

9 Q And why was that important?

10 A Well, first of all, because there was product --
11 perishable product on the trucks so the trucks were at risk of
12 being damaged from the loss of product or the product setting
13 up. And we just wanted to be sure that everybody understood
14 that they had an obligation to deliver the load they had on and
15 get back and get locked out.

16 Q How did you give that instruction to Adam Doyle?

17 A Over the phone.

18 Q To your knowledge, what did Adam Doyle do?

19 A He got on the radio and made an announcement to all the
20 drivers.

21 Q And how do you know that?

22 A Well, he told me that he did. And then I've since seen
23 the transcript of what he said specifically.

24 MR. LUNDGREN: And Ross, could we put the transcript up?

25 Q BY MR. LUNDGREN: And I'm showing you what's been marked



1 as Respondent Exhibit 24, page 5. And at the top, do you see
2 where it says, speaker, hey, good morning, everybody? Hey,
3 I've just been informed to advise you. Do you see that?

4 A I do.

5 Q Okay. And what is -- what is that statement, do you know?

6 A I believe that's the statement that Adam made on the radio
7 that morning to the drivers.

8 Q And so when you say you saw a transcript showing that he
9 had made that statement, were you referring to this
10 transcript --

11 A Yes.

12 Q -- or were you referring to this document?

13 A Yes.

14 Q When you issued the warning letters --

15 MR. LUNDGREN: Strike that.

16 Q BY MR. LUNDGREN: When the warning letters were issued for
17 the events involving August 11, were you aware that Adam had
18 made that statement?

19 A Yes.

20 Q Why did you think the drivers needed to complete their
21 delivery?

22 A Well, we needed to get that product off the truck in a
23 safe manner.

24 Q And what -- what's the concern about that?

25 A Well, it's a perishable product.

1 Q Who -- who told you drivers -- did anybody tell you
2 drivers must complete the delivery?

3 A Just what Adam said over the radio.

4 Q But what was the source of your information for put -- for
5 making that statement? Was there any source of it?

6 A Oh. Brian Sleeper.

7 Q Who's Brian Sleeper?

8 A He was our industrial relations director at the time for
9 CalPortland.

10 Q And was Mr. Sleeper -- did he report directly to you, or
11 where was he in the chain of command?

12 A No. He worked in H.R. So he -- he was support for the --
13 for the whole company.

14 Q Do you have -- did you have familiarity with Mr. Sleeper?

15 A Yeah. I was very -- yeah. Very close. I worked very
16 closely about -- he was also at the table, at the bargaining
17 table, you asked me for -- for Glacier, if I didn't mention
18 that.

19 Q Where was his office in 2017, do you know?

20 A He was in Glendora.

21 Q And where is Glendora?

22 A It's in California, in Southern California, about 40 miles
23 east of downtown Los Angeles. That's where the corporate
24 offices were at that time.

25 Q Do you know how long Mr. Sleeper worked for CalPortland?



1 A He was with CalPortland for many years.

2 Q Do you know what his primary duties were when he worked at
3 CalPortland?

4 A He was responsible for all things labor-related, both
5 union and nonunion. He would be there to negotiate contracts.
6 And if we had labor issues, he was involved with helping to
7 sort those out. He was very knowledgeable. He'd been in
8 Operations for a long time before he was in labor role. And he
9 really did a great job for the company.

10 Q Was -- was -- did he have a geographical region?

11 A He had the whole company.

12 Q How often did you work with Mr. Sleeper?

13 A Regularly. And any time I had a labor issue, I would go
14 to him for clarification or information. He had a long history
15 so he could tell the history on things. He could give you the
16 history, how we got here, what led to this, or how we got to
17 this decision to do that.

18 We also negotiated many contracts together, probably 14 or
19 15 contracts together over the time that I was at CalPortland
20 while he was still alive.

21 Q And you may have already said this, but just in case you
22 didn't. I apologize if you did. Do you know what Mr.
23 Sleeper's title was in August 2017?

24 A I think he was the director of industrial relations.

25 Q And where is Brian Sleeper today?



1 A Unfortunately, Brian passed away in 2021.

2 Q And in your experience, did you ever observe any hostility
3 by Brian Sleeper towards employees engaging --

4 A Oh. Not at all.

5 Q -- in protected activity?

6 MS. CHEREM: Objection.

7 JUDGE WEDEKIND: A couple things. Please wait until the
8 question has been asked --

9 THE WITNESS: Okay.

10 JUDGE WEDEKIND: -- because we're recording. And what was
11 the objection?

12 MR. LUNDGREN: And in your experience, did you ever
13 observe any hostility by Brian Sleeper towards employees
14 engaging in protected activities?

15 JUDGE WEDEKIND: Do you have an objection?

16 MS. CHEREM: I did have an objection. Relevance. I
17 mean --

18 MR. BERGER: I will also object. Calls for speculation.

19 JUDGE WEDEKIND: It's so broad, vague.

20 MR. LUNDGREN: Sure.

21 JUDGE WEDEKIND: He's a labor relations director who deals
22 with employees every day. That's his job. And you're asking
23 if he ever exhibited any hostility?

24 MR. LUNDGREN: I was -- I was merely negating what I
25 thought was a theory from the other side. If they don't think



1 it's relevant, I won't ask the question.

2 MR. BERGER: I didn't object based on relevance. I
3 objected on -- as speculative.

4 JUDGE WEDEKIND: I don't like the question. I'm going to
5 sustain the objection.

6 First of all. Also, I'm not sure why we're talking about
7 Mr. Sleeper. I think your original question was something
8 about who made the decision to --

9 MR. LUNDGREN: We will --

10 JUDGE WEDEKIND: -- tell the drivers they had --

11 MR. LUNDGREN: We -- the -- the --

12 JUDGE WEDEKIND: -- to finish the jobs?

13 MR. LUNDGREN: The 39 warning letters that were all
14 rescinded in April of 2020, the witnesses will be testifying
15 about that.

16 JUDGE WEDEKIND: Okay. But I thought you asked -- or I
17 thought you were asking who made the decision to tell Mr. Doyle
18 to tell --

19 MR. LUNDGREN: No, no. We're not --

20 JUDGE WEDEKIND: -- the drivers they had to finish the
21 job.

22 MS. CHEREM: That's what I understood as well.

23 MR. LUNDGREN: No. Not -- I mean, that's where --

24 JUDGE WEDEKIND: First of all, her response to your
25 question -- your question, which I thought implied that was

1 that's how Mr. Sleeper got into the conversation.

2 MR. LUNDGREN: No. I apologize. My question about Mr.
3 Sleeper was generally just getting -- the question that you
4 have sustained the objection for was not related to the
5 communication of she should put this out.

6 It was background information about Mr. Sleeper because he
7 will be relevant to one of the warning letter packets that
8 are -- are going to be discussed in a few moments.

9 JUDGE WEDEKIND: I don't want to interrupt, but I'm just
10 saying.

11 MR. LUNDGREN: Sure.

12 JUDGE WEDEKIND: I'm going to want some clarification on
13 that at some point.

14 MR. LUNDGREN: Sure. That's fine.

15 JUDGE WEDEKIND: All right.

16 Q BY MR. LUNDGREN: Let's talk about batched concrete, Ms.
17 O'Regan. Once concrete is batched, who's entitled to the
18 immediate possession of the concrete?

19 A The customer.

20 Q And where is that described?

21 A On the delivery ticket.

22 Q Once concrete is batched -- once -- by batched, I mean,
23 when the water hits the cement, how soon does concrete start --
24 start thickening?

25 A It immediately begins to interact chemically, and the

1 concrete will begin to set.

2 Q And so once concrete is batched, when is there a risk of
3 the concrete potentially setting up in a mixer truck?

4 A Well, the risk is imminent. It's going to happen. As
5 soon as that chemical process starts, then you're not -- you're
6 not going to stop that process.

7 Q And so when you have batched concrete in the drum of the
8 mixer truck whose responsibility is to manage the batched
9 concrete?

10 A It's the responsibility of the driver.

11 MR. BERGER: I'm going to object. This calls for a legal
12 conclusion.

13 JUDGE WEDEKIND: I don't think it does. I've interpreted
14 it as a factual question. And responsibility means what?

15 Q BY MR. LUNDGREN: Whose duty is it --

16 A Yes.

17 Q Who's duty is it?

18 A Is the responsibility of the driver to manage the truck
19 and the product from the minute he gets into it until the
20 minute he parts it when he's gone home for the day.

21 Q And can you describe for us generally the -- the driver's
22 duty once they -- they receive the batched concrete in their
23 mixer truck? What's their duty?

24 A They get the concrete, they get their ticket, and they
25 head down the road to immediately take the product to the job

1 and deliver the concrete to the customer.

2 Q What is the importance of having the concrete delivered
3 immediately to the customer?

4 A Well, as I said, the concrete's a perishable product, and
5 most jobs have a time frame in which it has to be legally
6 delivered within from a code perspective.

7 Q When a -- who's responsible for the security of the mixer
8 truck?

9 A The driver, always.

10 Q After delivery, whose duty is it to ensure the residual
11 concrete, if any, is -- is cleaned out of the truck?

12 A Again, the driver.

13 Q And how do they perform that duty, do you know?

14 A They do an initial wash out usually on the job site, but
15 sometimes they -- maybe there's not a washout available on the
16 job site so they bring it back to the plant and wash out the
17 truck before they get loaded again or before they park it at
18 the end of the day.

19 Q Let's talk about the morning of August 11, 2017. Did you
20 personally observe any of the events in the yard that morning?

21 A I did.

22 Q And what did you observe?

23 A When I went out to the yard, there were many trucks that
24 were parked very chaotically in a disorganized manner all
25 throughout the yard, not in their assigned parking spots. They

1 were just left in a very, as I said, chaotic manner throughout
2 the entire Duwamish yard.

3 JUDGE WEDEKIND: What time was that?

4 THE WITNESS: You know, I can't tell you exactly.
5 Probably somewhere between 7:30 and 8:30, when I went down to
6 see what was happening and what were we doing? Because by now
7 I had heard that we had some trucks that had concrete left on
8 and just been walked away, abandoned and sell-less.

9 Q BY MR. LUNDGREN: And how long were you in the yard that
10 day?

11 A Oh. I didn't stay down there for very long. It wasn't
12 really safe to be down there. So I spoke with Justin for a few
13 minutes, and then I went back up to the office.

14 Q And when you say you spoke with Justin, what's Justin's
15 last name?

16 A Justin Denison.

17 Q And do you have a CDL?

18 A I do not.

19 Q Are you competent to handle mixer trucks full of concrete?

20 A I am not.

21 Q When you said you thought there was safety -- I think you
22 said the word safety. What are you talking about?

23 A Well, now there's a bunch of trucks. Some have concrete
24 on them, and I don't know how many. But you know, it's an
25 80,000 piece of equipment that's just abandoned in the yard. I

1 don't know if the parking brakes have been set properly. There
2 was a -- it was -- it was a very difficult situation that
3 morning.

4 Q How would you describe the urgency, if anything, of -- of
5 these fully loaded mixer trucks in the yard that morning?

6 A Well, there is an urgency, you know, for two reasons.
7 First of all, to secure the safety of the trucks and also to
8 get the -- the abandoned concrete off of the trucks that were
9 left with concrete on.

10 Not all of them had concrete on, but until we were able to
11 get to every truck and ascertain how many trucks had concrete
12 on, you know, we didn't know what we were dealing with. So
13 from a -- it had to be triaged. And then trucks had to be
14 moved around so that we could get them. And it was a -- it was
15 a really untenable situation that morning.

16 Q What -- what risks were, if any, were present with the
17 abandoned mixer trucks that morning?

18 A Well, the immediate risk was the concrete setting up
19 because not -- not only were we at risk for the concrete
20 setting itself, but if the concrete sets up with the mixers
21 running, it could actually turn the mixer over if it starts to
22 get hard before we get -- get the concrete off.

23 And the risk of the truck actually you know, brakes
24 failing. Or as I said, if it wasn't properly secured, we're at
25 the risk of having a truck get away, hurt somebody or worse.

1 Q What about turning the -- the truck off with full concrete
2 in it? Are there any risks in that?

3 A Well, that -- it just increases the -- the chemical
4 process. The set time is going to happen more quickly if we
5 stop agitating the truck. And again, there's the risk that at
6 that time the truck -- the truck is off and we turn it back on
7 and -- and the concrete sets, it's going to lode and
8 potentially turn the truck over.

9 Q And does leaving the -- the barrel running and abandoning
10 the truck alleviate all those risks?

11 A No. Not at all.

12 Q Explain that.

13 A You still have the -- you still have a similar risk where
14 the same risk is -- we're at risk for the same issue regardless
15 of whether the truck's on or off.

16 Q Why is that the case?

17 A Because we run the risk of having the concrete start to
18 harden. And as I said, it could turn over. And then just the
19 trucks being loaded in the yard with all that weight on them,
20 if we have brake failure and a runaway truck, somebody could
21 get hurt or worse.

22 Q Does -- will the concrete harden when the -- when the
23 truck is parked and the drum is turning?

24 A Concrete is going to get hard no matter what.

25 Q So does the concrete have to fully harden in the mixer

1 drum before there's a risk to the drum even when it's turning?

2 A No. It can start to set. It can start to get what we
3 call initial set, which is when it gets hard. And that can
4 cause us to have an uneven distribution of the load, which is
5 the scary part when the drums turning because it might take the
6 truck over.

7 Q How often do drivers leave fully loaded mixer trucks
8 running in the Duwamish yard and clock out and go home?

9 A Never.

10 Q What are the drivers supposed to do with their assigned
11 mixer truck prior to clocking out and go home?

12 A They're supposed to get their truck back to the plant, get
13 it washed out, and then put it in their assigned parking spot
14 before they clock out. And just to clarify, a lot of the
15 assigned parking spots for the trucks at Duwamish were on the
16 other side of the river. So they don't all park at Duwamish.

17 I think the only park that -- at that time about ten
18 mixers. And so the other 30 or however many there were,
19 they're all parked at a place that's not even where those
20 trucks are supposed to be parked at the end of the day.
21 They're literally just abandoned at the plant.

22 Q Have you ever heard the phrase, like, East Duwamish and
23 West Duwamish?

24 A Well, I think that implies the -- the other side of the --
25 that's where they parked, on the west. I think it's west of

1 the plant. The plant's on the east side, and they have go
2 across the river where the parking was for the mixers.

3 Q And have you ever been across the river to where the
4 parking is for the mixers?

5 A I hadn't.

6 Q Okay. And who else performs those duties --

7 MR. LUNDGREN: Strike that.

8 Q BY MR. LUNDGREN: Do the -- prior to parking, are there
9 any duties the drivers perform before clocking out and going
10 home.

11 A They wash their mixer out.

12 Q And what's the importance of that?

13 A Well, because even when you deliver the load of concrete,
14 there's residual concrete that gets left in the drum. So we
15 need to rinse that out because, over time, if we don't rinse
16 those trucks out, they're going to develop, build up, and
17 create a weight on the truck, which we don't want.

18 Then the truck won't hold a full load. It'll come back.
19 So trucks need to be cleaned out every day. And we wash -- we
20 wash also the fins and the -- and the chutes at the end of
21 every load to make sure the concrete doesn't set up on the fins
22 and the chutes.

23 And you know, we break windshields if rocks come off if we
24 leave concrete set up. So we have to take care of keeping
25 those trucks clean at all times.

1 Q And who else per -- other than the drivers, who else
2 performs that washout and parking duty?

3 A Nobody. That's the sole responsibility of the driver.
4 The truck is his office. The truck is where he goes to work
5 every day. That's his domain. That's his thing to -- he's the
6 ruler of his own little kingdom. You know, he's the
7 professional.

8 Q Setting aside August 11, 2017, how many times have you
9 seen a driver leave a loaded mixer truck running in the yard
10 and clock out?

11 A Never.

12 Q When you were in the yard making your -- you said you were
13 in the yard that -- that morning. How many drivers did you
14 see?

15 A I don't think I saw any drivers. I think they were gone.
16 They were all on the -- you know, they left the premises.

17 Q Who did you see that morning, if anybody?

18 A I -- I know I saw Justin Denison and spoke with him.

19 Q Who else?

20 A I don't think I saw anybody else in the yard at that time.
21 I know Dave was running around, but I didn't speak with Dave.

22 Q Dave who?

23 A Dave Siemering.

24 Q And who -- what would the -- the natural consequences have
25 been if nobody had stepped in to handle those abandoned mixer

1 trucks that morning?

2 A Well, we would have had concrete set up in all those
3 drums.

4 Q What would have happened if that happened?

5 A Well, the drums would have been lost and would been --
6 either we would have either had to chip or replace them, both
7 of which are extremely expensive tasks.

8 Q What's the standard useful life of concrete?

9 A Most of the codes call for concrete to be delivered within
10 90 minutes. Some are actually 60 minutes.

11 Q And when concrete's being delivered to reach the customer
12 within the useful life of the concrete, who is monitoring that
13 concrete?

14 A The driver.

15 Q And are there actions they may take -- need to take to
16 keep the concrete viable during that delivery?

17 A When they get to the job, if the slump is a little low,
18 they add a little water to bring the slump up to the pumper's
19 request or the contractor's request.

20 Q If you saw a ready mixer truck full of concrete abandoned
21 in the yard, how -- how soon after that would you become
22 concerned?

23 A Well, I'd be wondering --

24 MR. BERGER: Objection. Calls for speculation.

25 JUDGE WEDEKIND: Well, I think her answer is going to

1 solve the problem. Go ahead. What would you be wondering?

2 A I'd be wondering, where's the driver? And you know,
3 asking, why is this truck sitting here?

4 Q BY MR. LUNDGREN: And would you have any concern --

5 A Well, yes.

6 Q -- about the -- the equipment?

7 A As I said, it's -- it's never a great thing to see a
8 concrete mixer sitting unattended. You can see on jobs -- you
9 can see where we're stopped or were waiting to pump and the
10 drivers at the back of the truck or he's outside of his cab.
11 But they're always within the shot that they can jump in if it
12 rolls, and they can get to it.

13 It's when you see that somebody's walked away from a
14 running piece of equipment, there's always a concern. This
15 is -- this is never okay from a safety perspective.

16 Q Did you make the decisions to handle the 15 fully loaded
17 mixer trucks in the yard that morning? How to handle it, how
18 to address that situation, did you make that decision?

19 A From the disposal of the concrete or in what aspect?

20 Q Who made the decision on how to mitigate the circumstance
21 of all the abandoned concrete trucks that morning?

22 A Dave Siemering was running that triage and giving
23 direction to whomever he was able to employ to do that task
24 because he had a limited crew.

25 Q In your experience, would you have done things differently

1 than Dave Siemering this -- this morning?

2 A No.

3 Q Why do you say that?

4 A Because I think Dave did the best he could. And in the
5 end, it all turned out okay because nobody got hurt and we were
6 able to eventually restore order to the yard.

7 MR. LUNDGREN: And Ross, could you put up Joint Exhibit 2
8 for us, please? There is a paper copy of this at the table,
9 Ms. O'Regan, that you could also pull out to look at. Or you
10 can -- if you can see the screen, you can use the screen.

11 THE WITNESS: I can see the screen.

12 MR. LUNDGREN: Okay. And if you -- Ross, could you go to
13 page 2? Page 3?

14 Q BY MR. LUNDGREN: On page 3 of the exhibit, you'll see an
15 August 28, 2017 letter to a Byron Baker. Do you see that
16 letter?

17 A I see it.

18 Q And it -- the first sentence says, this constitutes a
19 warning letter for your conduct of August 11, 2017. Do you see
20 that?

21 A I see it.

22 Q Okay. Who issued these letters?

23 A I did.

24 Q Who, if anyone, in management reviewed the letters prior
25 to issuance?

1 A Brian Sleeper probably took a look at it.

2 Q For what conduct did you issue the warning letters?

3 A These letters were issued to the drivers who failed to
4 deliver the concrete to the job and/or wash out their trucks
5 upon return to the yard.

6 Q What -- what apart from that conduct factored into your
7 decision?

8 A Nothing.

9 Q At the bottom of the letter, there's language about
10 reasonable precautions. Do you know where that language came
11 from?

12 A Oh. That probably came from Brian. He was probably
13 advised by counsel.

14 Q Well, and we don't need to --

15 A Brian Sleeper -- Brain --

16 Q -- talk about counsel --

17 A Sorry.

18 Q -- but Brian who?

19 A Brian Sleeper.

20 Q Okay. Who investigated the events to determine who should
21 be issued a warning letter for August 11 conduct?

22 A I think Brent did the investigation.

23 Q And who is Brent?

24 A Brent Nordyke.

25 Q And what investigation did you do?

1 A I didn't do anything.

2 Q Okay. Then how did you determine who the issue letters
3 to?

4 A Based on Brent's findings that he produced a -- a list of
5 the drivers that had left concrete on the trucks.

6 Q And I'll represent to you there's a number of identical
7 warning letters in Joint Exhibit 2 for August 11th conduct that
8 are identical in their language. Do you recall issuing those
9 letters?

10 A Yes.

11 Q Okay. And so without paging and going through each
12 letter, were they all issued for the same reasons you've just
13 described?

14 A They were.

15 MR. LUNDGREN: Could you please put up Respondent Exhibit
16 8?

17 Q BY MR. LUNDGREN: I'm showing you what's been marked as
18 Respondent Exhibit 8.

19 A Yes.

20 Q Is this a document you have seen before?

21 A Yes.

22 Q And what is the document?

23 A This is a document that Brent put together that gave the
24 disposition of the mixers.

25 Q And how, if anything, did this information impact your

1 issuance of a warning letter?

2 A Well, this is how we ascertain who -- which drivers were
3 going to get warnings.

4 Q And you said you relied on Brent's findings. I think
5 that's what you said.

6 A I did.

7 Q What do you mean you relied on Brent's findings?

8 A Well, I took this to be factual, and the letters of
9 discipline were issued based on these facts.

10 Q Okay. And how did Brent communicate his findings to you?

11 A By presenting this.

12 Q And you're referring to Respondent Exhibit 8?

13 A Yes.

14 Q And did you have any communication with Mr. Nordyke before
15 issuing the warning letters?

16 A I don't think so.

17 Q Okay. What discussions did you have with each driver
18 prior to issuing the warning letters?

19 A None.

20 Q Did you consult any other managers below you at the --
21 before you issued the warning letters?

22 A I think Justin was part of the discussions, but I wasn't
23 consulting. We -- you know, we reviewed this. And based on
24 the facts of Brent's findings, we issued disciplinary -- I
25 issued disciplinary notices.

1 Q And you said Justin. Is that Justin Denison?

2 A Justin Denison.

3 Q How typical is it for you to issue warning letters without
4 talking to each of the drivers?

5 A It's not atypical.

6 Q Why do you say that?

7 A In this type of an instance, there wasn't a need to talk
8 to the drivers.

9 Q And --

10 A There wasn't another side of the story.

11 Q Okay. In your mind, was a warning letter serious
12 discipline?

13 A Well, no. It's not -- not really very serious.

14 Q And explain why -- what you mean by that.

15 A It's a warning. There's no time lost, money lost,
16 nothing -- there's no damage to the driver in any way. It
17 was -- it was just letting people know that their actions were
18 inappropriate.

19 MS. CHEREM: Okay. Could you put the warning -- warning
20 letters back up, please?

21 Q BY MR. LUNDGREN: And we'll use the -- the warning letters
22 for the August 11th event are identical, so let's continue to
23 use the Byron Baker example. Do you see that, Ms. O'Regan?

24 A I do.

25 Q And do you see where it says other gross misconduct and

1 poor performance?

2 A I do.

3 Q Where does the other mis -- where does the -- the phrase
4 other gross misconduct come from?

5 A I believe that comes right from the collective bargaining
6 agreement.

7 Q And what about poor performance?

8 A That's the --

9 Q What does that refer to?

10 A The work rules.

11 Q Sorry. I didn't hear you.

12 A The work rules.

13 Q Was Brent Nordyke accessible to you during the time frame
14 you were issuing these warning letters?

15 A Yes.

16 Q Generally, was Brent Nordyke accessible to you when he
17 wasn't -- you know, when he wasn't at work? If you needed to
18 reach Brent Nordyke, could you reach him when it wasn't his
19 scheduled work times?

20 A Probably. Most -- most managers are pretty respon -- you
21 know, responsive if you need to get them in off hours. It's
22 kind of the business we're in.

23 Q Okay. So let's go to General Counsel Exhibit 10, which is
24 the collective bargaining agreement. And do you recall where
25 in the collective bargaining agreement other gross misconduct

1 appears? Do you recall?

2 A Section 21?

3 Q Okay. Let's -- let's see.

4 MR. LUNDGREN: Ross, could you turn to Article 21 from me,
5 please?

6 MS. CHEREM: Melanie, do have a copy in front of you, or
7 would you like one?

8 THE WITNESS: I think there's one right here. Let's see
9 if I'm close. Article -- Article 21.

10 Q BY MR. LUNDGREN: And before we get started, during your
11 time at the Glacier facility, did you have experience with the
12 King County labor agreement?

13 A I was familiar with it, you know. I don't think I knew it
14 intimately, but it doesn't look a lot different from other
15 labor -- labor agreements that I'm familiar with.

16 Q And did you have -- what was your involvement with the
17 labor agreement? Was it part of your duties?

18 A It was.

19 Q Okay. And how so?

20 A Well, I was involved with the negotiations and then --
21 this is -- this is what we use to adjudicate offenses and issue
22 discipline. And this is -- this is the golden rule, right?

23 Q And were you involved in issuing discipline to drivers
24 during your time at the Glacier facility?

25 A This was probably my first direct involvement in the



1 issuance of discipline.

2 Q Okay. And why is that the case?

3 A As I said, this was a pretty egregious offense, and I
4 wanted people to understand that it was really unacceptable.
5 It was unacceptable behavior as a professional, as a person.
6 And really, from a safety perspective, it was -- it was really
7 beyond the pale. It was -- I don't know. I can't -- I can't
8 stress enough how very wrong what happened on that day was.

9 MR. LUNDGREN: And Ross, could you turn to the next page?

10 Q BY MR. LUNDGREN: Have you found where gross misconduct
11 appears --

12 A I have.

13 Q -- in the labor agreement?

14 A Article 21.06, number 7, other gross misconduct.

15 Q Okay.

16 A So technically, based on this -- this gross misconduct,
17 technically, drivers could have been terminated based on the
18 golden rule --

19 Q Okay.

20 A -- for that conduct.

21 Q And who made the -- the decision to issue warning letters
22 rather than more serious discipline?

23 A Well, I did.

24 Q And why did you decide to only issue warning letters?

25 A Well, I wanted the drivers to understand that what had

1 happened that day was -- was really very unacceptable. At the
2 same time, they had just been out on a seven-day strike.

3 They had been out of work. We had been out of business.
4 I wanted everybody just to get back to work and just move
5 forward. We were ready to go and put it all back together
6 again and move forward.

7 Q What about poor performance? You said that was from the
8 work order --

9 A Work rules.

10 Q -- or the labor agreement?

11 A Work rules. Number 3 and 21.

12 MR. LUNDGREN: Okay. Ross, could you pull up General
13 Counsel Exhibit 11? And I think the work rules are on page 23.

14 MR. MERRITT: I believe she has a paper copy. I have one
15 available if she'd like.

16 Q BY MR. LUNDGREN: Do you want a paper copy, Melanie -- Ms.
17 O'Regan?

18 A I don't need it. I think 3? No.

19 Q Well, let me ask you a question first.

20 A Okay.

21 Q I'm showing you the work rules. They've been admitted
22 into evidence. What work rules did you conclude were violated
23 when you issued the warning letters for the August 11th
24 conduct?

25 A Rules number 3 and 21. And I think there were others that

1 could follow, but those were specific.

2 Q And so I'm looking at work rule 3, which states -- do you
3 see where it says employees shall be responsible for all the
4 company's tools, equipment, and property assigned to and
5 requisitioned by him or in his custody in care?

6 A Yes.

7 Q Is that the work rule you're referring to?

8 A It is.

9 Q And you said there was another work rule?

10 A 21.

11 Q And I'm showing you what's been -- well, here. Let me
12 just read it to you. Work rule 21 in General Counsel Exhibit
13 11 says misuse, abuse, or destruction of company property,
14 tools, or equipment, including company vehicles. Is that the
15 work rule you're referring to?

16 A It is.

17 Q Okay. The letters are dated August --

18 MR. LUNDGREN: Ross, can you put the warning letter back
19 up for a moment?

20 Q BY MR. LUNDGREN: You'll see the warning letters are dated
21 August 28th, 2017.

22 A I do.

23 Q Do you recall, did the labor agreement have any timing
24 requirement for when you iss -- needed to issue those warning
25 letters?

1 A The labor agreement calls for a ten-day -- ten working
2 days.

3 Q And do you recall where in the labor agreement that was
4 located?

5 A I don't.

6 Q Okay. And so if they were issued on August 28th, 2017 for
7 conduct on August 11, 2017, were they untimely?

8 A They were not. The drivers were not working from the 11th
9 through the 18th. So if you take from the time they got back
10 to work, we were within the timely ten-day requirement.

11 Q Do you know --

12 MR. LUNDGREN: Strike that.

13 Q BY MR. LUNDGREN: Who participate -- out of the Teamster
14 drivers, to your knowledge, who -- who participated in the
15 strike by not coming to work?

16 A All of the drivers went out on strike.

17 Q So how did whether a driver --

18 MR. LUNDGREN: Strike that. Ross, would you put up Joint
19 Exhibit 3, please? And could you page through it one by one
20 for us?

21 Q BY MR. LUNDGREN: I'm showing you --

22 MR. LUNDGREN: Stop. Stop right there. Okay. And what's
23 the page number on this, Ross?

24 MR. MERRITT: Page 5.

25 MR. LUNDGREN: Okay. Sorry. I had to -- put up Joint

1 Exhibit 2.

2 MR. MERRITT: Sorry. Wrong warning letter.

3 MR. LUNDGREN: There we go. Now I would like you to page
4 through this for a moment.

5 Q BY MR. LUNDGREN: We're -- we're going through Joint
6 Exhibit 2 with you here.

7 MR. LUNDGREN: It is ready? Stop right there.

8 Q BY MR. LUNDGREN: There's a warning letter in there for
9 a -- for a Corwin Matwichuk. Do you see that?

10 A I see it.

11 Q Okay. And so he was issued a warning letter; is that
12 correct?

13 A He was.

14 Q Okay. And who made the decision to issue that?

15 A I did.

16 MR. LUNDGREN: Could you keep scrolling through the
17 exhibit, Ross? Okay. Stop right there.

18 Q BY MR. LUNDGREN: Do you see the -- there's a letter to
19 Jeff Harris. There's a series of them. There's a letter to
20 Jess -- Jeff Harris. It says, please accept my sincere apology
21 for having made an error. Do you see that?

22 A I do.

23 Q And it's signed by Justin Denison.

24 A Um-hum.

25 Q Do you see that?

1 A Yes.

2 Q Did you have knowledge that Justin Denison was rescinding
3 these warning letters?

4 A Yes. I did.

5 Q Okay. And do you have any -- do you have any knowledge as
6 to why Justin Denison rescinded the warning letters?

7 A Because we made a decision to rescind some of the warning
8 letters.

9 MR. LUNDGREN: Okay. Could you put up General Counsel
10 Exhibit 23, please?

11 Q BY MR. LUNDGREN: And I'm showing you General Counsel
12 Exhibit 23, which is an email from Brian Sleeper to you. You
13 may take a moment to review the email. And let me know when
14 you've had a chance.

15 A Oh. I'm ready.

16 Q Okay. Do you remember this email?

17 A I do.

18 Q And what is this email?

19 A This is an email from Brian Sleeper to -- to myself,
20 Justin Denison, Brent, and copied Ron -- Ron Summers is
21 copied. -- where Brian recommended that we rescind the warning
22 notices for the employees that dumped their load and parked
23 their trucks or handed their keys to the driver -- or to the
24 supervisor.

25 So we wanted to rescind those notices to those drivers

1 that made an effort to do the right things with the truck.

2 Q And what -- what happened after Brian Sleeper made this
3 recommendation?

4 A Justin wrote the rescinded warning letters to those
5 drivers.

6 Q And is that like the one we were just talking --

7 A The one that you were just --

8 Q A moment ago?

9 A Yes.

10 MR. LUNDGREN: Would you put that up, please, Ross?

11 Q BY MR. LUNDGREN: Okay. And we're back to Exhibit 2,
12 which is a warning letter issued to Jeff Harris that we were
13 talking about momentarily. Is this the resc -- I'm sorry --
14 rescission letter signed by Justin Denison. Is this one of the
15 letters that was issued in response to Mr. Sleeper's
16 recommendation?

17 A It is.

18 MR. LUNDGREN: Okay. And Ross, could you keep going
19 through the exhibit one by one? Stop right there.

20 Q BY MR. LUNDGREN: Now we see a September 1st, 2017 letter
21 to a -- to Corwin Matwichuk. Do you see that?

22 A I do see it.

23 Q And it begins with, please accept my sincere apology for
24 having made an error. Do you see that?

25 A I see that.

1 Q Okay. And it's signed by you. Do you see that? Did you
2 issue this letter to Mr. Matwichuk?

3 A I did.

4 Q Okay. And who made the decision to issue this letter?

5 A I did.

6 Q And why did you send this letter to Mr. Matwichuk?

7 A Because the -- his disciplinary letter was issued in
8 error. He actually delivered his concrete to the job that day,
9 brought his truck back, washed it out, and parked it. So we
10 were completely mistaken in identifying him among in those who
11 failed to deliver their load and wash your trucks out. So
12 and --

13 Q And how many other -- how did you learn that -- that you
14 had made this error?

15 A Somebody brought it to my attention.

16 Q And what would you have done if other drivers had brought
17 your attention, or other persons had brought to your attention
18 that there had been an error in your letter for what was done?

19 MS. CHEREM: Objection.

20 JUDGE WEDEKIND: Sustained.

21 MR. LUNDGREN: And keep scrolling through it, Ross,
22 please? Stop right there.

23 Q BY MR. LUNDGREN: Now where you see a September 1 email to
24 you. Do you see that?

25 A Um-hum.

1 Q And do you re -- who's Kim Brook?

2 A Kim Brook was the H.R. manager for the division.

3 Q Okay. And take a moment to review this email chain, if
4 you would, and just let us know when you've had a chance.

5 MS. CHEREM: My apologies. What document is this?

6 MR. LUNDGREN: This is still General Counsel Exhibit 2.
7 Sorry. It's Joint Exhibit 2.

8 MS. CHEREM: I thought the joint exhibit was just the
9 disciplines. Did we accidentally have an email in there?

10 MR. LUNDGREN: There was an email in there that relates to
11 Corwin Matwichuk's rescission letter.

12 JUDGE WEDEKIND: We were just on GC Exhibit 23, right?

13 MR. LUNDGREN: This is --

14 MS. CHEREM: The other one was GC 23.

15 MR. LUNDGREN: Ross, correct me if I'm wrong. This is
16 Joint Exhibit 2.

17 MR. MERRITT: Joint Exhibit 2, page 27.

18 JUDGE WEDEKIND: But before, we were talking about -- so
19 now we're back to Joint Exhibit 2.

20 MR. LUNDGREN: Right. Which is --

21 MS. CHEREM: Okay.

22 MR. LUNDGREN: -- the collection of warning letters.

23 MS. CHEREM: Yes.

24 MR. LUNDGREN: This is in the collection of warning
25 letters behind Mr. Matwichuk's rescission.

1 MS. CHEREM: Was this email provided to him? I guess I --
2 it might be an error on our part that I -- we, like, missed
3 this while we were going through, but I thought that Joint 2
4 was just the warning letters and the rescissions and not
5 internal emails about them.

6 I mean, you guys can get this in, just have it separate.

7 MR. LUNDGREN: It is in. It was in -- it's always been in
8 Joint Exhibit --

9 MS. CHEREM: I un --

10 MR. LUNDGREN: -- 2 forever.

11 MS. CHEREM: I understand that. What I'm saying is that I
12 think that may have been a mistake, and we can talk about it
13 off the record. I'm not objecting to this document being in.
14 Just that I don't think it's appropriately part of Joint
15 Exhibit 2.

16 MR. BERGER: Yes.

17 MS. CHEREM: My intention was that Joint Exhibit 2 be the
18 disciplines and the rescission letters. If you want to rip
19 this page out and have it be its own exhibit, I'm totally fine
20 with that.

21 JUDGE WEDEKIND: Well, do we have a paper number? We
22 don't have page numbers, either, do we, on Joint Exhibit --

23 MS. CHEREM: Right. I'm didn't -- the -- the joint
24 exhibit was offered by you to me, and we agreed to stipulate to
25 it. It's a packet that was prepared long ago.

1 MS. CHEREM: You prepared the packet.

2 MR. LUNDGREN: Yeah. Well, not me personally.

3 MS. CHEREM: Well, your --

4 MR. LUNDGREN: Long ago.

5 MS. CHEREM: Respondent, in their prepared packet --

6 MR. LUNDGREN: And this email has always been in the
7 packet. I mean, Ross --

8 JUDGE WEDEKIND: It's -- all right. Can we --

9 MR. LUNDGREN: -- can you go to the next page?

10 JUDGE WEDEKIND: -- just leave it in there? It's in the
11 record. We're --

12 MS. CHEREM: We can just leave it.

13 MR. BERGER: Just for the record, I believe this email is
14 General Counsel 22.

15 MS. CHEREM: Okay. Well, there you go. Okay.

16 JUDGE WEDEKIND: Okay.

17 MS. CHEREM: That's fine.

18 MR. LUNDGREN: And keep -- keep scrolling through, please,
19 Ross?

20 MS. CHEREM: Thank you. And it is. It's been --

21 MR. LUNDGREN: No. Stop -- stop right here, Ross.

22 Q BY MR. LUNDGREN: Do you see there an April 30, 2020 email
23 from Scott Nicholson to Daniel Resnick. What involvement did
24 you have, if any, in the issuance of the rescission letter that
25 Scott Nicholson issued?

1 A I had none.

2 Q Were you still working in Seattle --

3 A No.

4 Q -- at that time? I'm sorry. I didn't hear you.

5 A No. I was in L.A.

6 MR. LUNDGREN: Now if we could go to Joint Exhibit 3,
7 please, Ross?

8 Q BY MR. LUNDGREN: I am showing you Joint Exhibit 3, which
9 I'll represent to you is 39 warning letters related to events
10 of Saturday, August 19, 2017.

11 MR. LUNDGREN: Could you page to the next page, please,
12 Ross? And the next page? And the next page.

13 Q BY MR. LUNDGREN: Do you see the August 23, 2017 letter to
14 Eric Allen that says, re: failure to report to work on
15 Saturday, August 19, 2017? Take a moment to review that, if
16 you would, please.

17 A Okay.

18 Q And I'll represent to you there's 38 other letters in this
19 exhibit to 38 other drivers, and let's just use this one.
20 They're all identical. Who wrote the -- these 39 warning
21 letters for the August 19 event? Do you know?

22 A I believe Brian Sleeper wrote these letters.

23 Q Why do you believe it was Brian Sleeper?

24 A Because it's not my font, so I know I didn't write it.
25 And it -- it looks pretty thorough and looks like it's got

1 Brian's fingerprints on it.

2 Q Okay. What knowledge at the time, if any, did you have
3 about these 39 warning letters being issued?

4 A I was aware of these letters.

5 Q Okay. And how were you aware?

6 A Because I was involved in the discussion, the -- the list
7 of drivers, how many didn't show up for work.

8 Q Why were the 39 warning letter issued -- 39 warning
9 letters issued?

10 A They failed to report for their start times on the early
11 morning of August 19th for the mat pour.

12 Q Can you tell us, do you have personal knowledge of what
13 happened that day relating to the mat pour?

14 A I do.

15 Q And do you have personal knowledge of what happened the
16 day before, on August 18th, leading to the scheduling of the
17 mat pour?

18 A I do.

19 Q Can you generally describe for us the background of -- of
20 that mat pour? What happened?

21 A So this mat pour was scheduled with GLY originally -- it
22 was actually originally scheduled before August 12th, but then
23 they had pushed back to August 12th. And we had notified the
24 drivers that there would be a mat pour in advance to let them
25 know that we wouldn't be issuing any time off, that everybody

1 was going to be expected to work.

2 And then when we -- then we -- when we went on strike, we
3 had to wait for the strike to conclude before we could
4 reschedule the mat pour. But there was an urgency to this
5 particular building being built. So we knew that as soon as we
6 weren't on strike anymore, we were going to pour this mat pour.

7 Q And how were the drivers' start times communicated to them
8 that day? Do you know?

9 A We -- we did place two phone calls to each driver, and
10 then we posted the times before 5:00, which is actually what's
11 required to let the drivers know that they'd be working the
12 next day.

13 Q And were there concerns -- before the ratification vote,
14 did you have any indications that the strike might end that
15 day?

16 A No. We didn't know until we heard that -- because we were
17 on strike, our dispatchers were out. So we just heard that the
18 drivers were going to go vote Friday morning.

19 Q Okay. And were there any rumors about whether drivers
20 would report or not to work --

21 MS. CHEREM: Objection.

22 MR. LUNDGREN: -- after the start time?

23 JUDGE WEDEKIND: Yeah. Let's hear the whole question.

24 Was there any rumors that the drivers were going to report to
25 work --



1 MR. LUNDGREN: After the strike.

2 JUDGE WEDEKIND: -- after the strike. Did you hear any
3 rumors?

4 THE WITNESS: Yes. We began hearing rumors before we were
5 even notified that the contract was ratified.

6 MR. LUNDGREN: If I may just have a moment, Your Honor, to
7 get an exhibit.

8 JUDGE WEDEKIND: Sure.

9 (Counsel confer)

10 Q BY MR. LUNDGREN: And I'm showing you what's been marked
11 as Joint Exhibits 4.1-108. And it's an email, and it's in
12 reverse. It's already admitted as --

13 MS. CHEREM: You probably don't have it in front of you,
14 so if we can make it a little bigger.

15 MR. LUNDGREN: Sure.

16 JUDGE WEDEKIND: Yep.

17 MR. LUNDGREN: And Ross, if you could start at the bottom
18 and scroll your way up so the witness may review. So stop
19 right there.

20 Q BY MR. LUNDGREN: Let's start here. Do you see an August
21 18th, 2017 email at 12:10 p.m. from Rob Johnson to a number of
22 persons?

23 A Yes.

24 Q Okay. And the first recipient looks like a Nerdrum. Do
25 you see that?

1 A Um-hum. That's Paul Nerdrum.

2 Q Who's Paul Nerdrum?

3 A He's the owner of Salmon Bay.

4 Q And then there's a Greg McKinnon?

5 A Greg is with Stoneway.

6 Q And a Justin Denison?

7 A Justin was my operations manager.

8 Q Brian Sleeper?

9 A Industrial relations manager.

10 Q And then you. And it says -- do you see where it says
11 word from driver's contract ratified; claim is Union has
12 instructed drivers not to answer phones for Saturday work. We
13 plan on running. We expect drivers to work. What has others
14 heard? Do you see that?

15 A I do see that.

16 Q Do you recall receiving that email that -- that day?

17 A Yes. I do.

18 Q What actions, if any, did you take when you saw that
19 email?

20 MS. CHEREM: Objection, relevance. We're talking about
21 the discipline letters here.

22 MR. LUNDGREN: And really, to be perfectly honest, Your
23 Honor, we -- we don't really want to have to go through this,
24 but there -- there --apparently, the Union is making an
25 argument that even though we didn't anticipate the mat pour on

1 Thursday because the strike wasn't over, that somehow Brent
2 Nordyke should've put a heads-up notice in the driver's room
3 even though the driver's weren't in the drivers room because
4 they were on the strike. And so if you're -- if they're going
5 to make that argument, that fact that Melanie was -- Ms.
6 O'Regan was informed that the Secretary Treasurer of the Union
7 had told the President of GLY that we have specifically
8 instructed the drivers to respond to dispatch, would be
9 relevant to that issue about assigning start times that
10 afternoon.

11 MR. BERGER: Can I respond to that?

12 JUDGE WEDEKIND: Yes.

13 MR. BERGER: So this was the very reason why we agreed to
14 a stipulation to not get into Glacier's since dismissed
15 employee resolved misrepresentation claims. I mean, there's a
16 limited amount of background, I suppose, but at this point,
17 we're -- we're talking about the very issues that we stipulated
18 to. And to be clear, the only reason that the Union, that --
19 that we asked any questions about the responsibilities of
20 management was because on direct-examination, Mr. Nordyke and
21 others, it was Glacier that decided to ask questions about what
22 was required or what was the experience for the regular process
23 for mat pours.

24 It was never our intention to put on evidence about that
25 because it is all part of the State Court record.

1 MR. LUNDGREN: If I may, Your Honor?

2 JUDGE WEDEKIND: So first of all, is this relevant to the
3 discipline or the State Court suit?

4 MR. LUNDGREN: Well, let -- let me explain the issue.

5 JUDGE WEDEKIND: Okay.

6 MR. LUNDGREN: Is when the General Counsel and the Union
7 stipulated yesterday that they were not going to use anything
8 outside the State Court record to make their argument about the
9 basis of this issue. I -- I pointed out that there are
10 ancillary overlap between the events that led to the
11 mobilization of the mat pour, and the warning letters.

12 And so at issue in the Union's theory on the warning of
13 the letters is that, hey, you shouldn't have issued these
14 warning letters because Mr. -- you know, because the notice in
15 the driver's room or something, which isn't a requirement. And
16 they're making, I think, a Wright Line argument, you know,
17 like, you didn't follow the -- the labor agreement or something
18 kind of argument to say that the -- the 39 warning letters were
19 unlawfully motivated.

20 JUDGE WEDEKIND: Can we stop there? Let's just find out I
21 that's true. Is that -- is the Union making this argument?

22 MR. BERGER: I'm -- if I'm understanding correctly, unless
23 the Respondent's argument is that the actual reason that
24 discipline was imposed because of Mr. Hicks alleged
25 misrepresentation, than I don't see how any conversation about

1 that is relevant.

2 MR. LUNDGREN: And if I -- if I may, Your Honor. We don't
3 have an argument. We issued discipline because 39 drivers were
4 assigned start times and didn't show up that night.

5 JUDGE WEDEKIND: What I want to know -- right.

6 MR. LUNDGREN: And that's it.

7 JUDGE WEDEKIND: Right. What I want to know is I'd like
8 you to answer -- are you actually arguing what he says you're
9 think your arguing -- arguing?

10 MR. BERGER: Okay. Maybe I need to hear it again.

11 JUDGE WEDEKIND: Well, he said it twice. Let's make
12 sure --

13 MR. LUNDGREN: If you're going to argue and turn this into
14 a contract grievance, like, did Mr. Nordyke need to put the - -
15 the notice in the -- the driver's room and therefore you didn't
16 follow your labor agreement or practices when you issued the 39
17 warning letters, and that equals animus or unlawful motivation
18 under the Act, then we have to go through it.

19 And from our minds, 39 people were assigned start times.
20 39 people didn't show up for work. Those 39 people are the
21 only 39 people who got a warning letter. I don't see a Wright
22 Line claim there at all, but I don't know what the argument is.

23 MR. BERGER: To be honest, I don't think it's directly
24 relevant. I -- I think it's sufficient for the Wright Line
25 analysis to show that Glacier had knowledge that drivers were

1 exercising a right that they believe based on the contract.
2 And then, it's a Wright Line question whether or not the
3 retaliation -- the discipline was based off of that. Whether or
4 not something was required by the contract, I mean, I do want
5 to pres -- to the extent that it's relevant -- I asked cross-
6 examination questions because it was asked on direct. But I
7 think -- yeah, it seems to be part of the company's theory that
8 they complied with the contract, but I don't -- I think it's A:
9 completely resolved by the State Court action, and B: not
10 directly relevant as far as I can see.

11 MS. CHEREM: May I also --

12 JUDGE WEDEKIND: But you just said that you think it's
13 relevant whether the company had noticed that the drivers
14 were -- were going to exercise the rights under the contract?

15 MR. BERGER: Correct.

16 JUDGE WEDEKIND: Isn't this clearly relevant to that? It
17 says the claim is the Union has instructed drivers not to
18 answer their phones for Saturday work. Isn't that what you
19 just said that the issue --

20 MR. BERGER: Well, I don't know if there's -- that's a
21 suggestion that that was -- there's a contractual basis of
22 that.

23 JUDGE WEDEKIND: It could be.

24 MR. BERGER: What I --

25 JUDGE WEDEKIND: It could be.

1 MR. BERGER: Okay. I understood where this was going as
2 to be talking about Mr. Hicks' conversation with Mr. Herb.

3 MR. LUNDGREN: That's exactly where's it's going. That's
4 how it gets resolved. And then -- and then when it's resolved
5 the start time assignments are given to the drivers and 39
6 drivers don't show up, and they're given -- those 39 drivers
7 are given warning letters for not showing up. I don't see a
8 Wright Line claim. If they're going to try to turn it into a
9 labor agreement arbitration, and we're going to argue about
10 what the labor agreement mean, then I got to get into it.

11 JUDGE WEDEKIND: But is that the conversation that led to
12 the State Court suit that this --

13 MR. LUNDGREN: That -- that is also the misrepresentation
14 claim for the State Court suit, so that's the overlap.

15 JUDGE WEDEKIND: -- apparently, but --

16 MS. CHEREM: Can I say something amicable?

17 JUDGE WEDEKIND: Yeah, sure.

18 MS. CHEREM: So you can all feel free to reject. So
19 perhaps we can take some time off the record to just take a
20 minute and let everybody formulate their thoughts on this. I
21 do think it's possible people are talking passed each other a
22 little bit. And that, maybe, if we take a step back, and maybe
23 allow the Union counsel to further, like, specify their theory
24 that we could perhaps find a way to see if it is not
25 necessarily, like, -- my understanding of the Union's theory

1 might be that it would not at all entail the -- the rumors
2 conversation, but I don't know that they're --

3 JUDGE WEDEKIND: Well, is the conversation the sub -- the
4 conversation that we're going to get into next, is that already
5 in the record?

6 MR. LUNDGREN: It is.

7 JUDGE WEDEKIND: It's something that I can review --

8 MR. LUNDGREN: You could.

9 JUDGE WEDEKIND: -- and consider as part of the background
10 or whatever?

11 MR. LUNDGREN: You could -- you could.

12 JUDGE WEDEKIND: Because that's part of what the State
13 had.

14 MR. LUNDGREN: It's in the State Court record.

15 MS. CHEREM: It is.

16 JUDGE WEDEKIND: So why -- why do we need to get -- so
17 this is in the record as well?

18 MR. LUNDGREN: Yes. It's all of it.

19 JUDGE WEDEKIND: Is this a separate exhibit or this is the
20 State record joint --

21 MS. CHEREM: This is the State record.

22 JUDGE WEDEKIND: All right. So why do we need to ask this
23 witness about this issue?

24 MR. LUNDGREN: Because typically, if you're addressing a
25 Wright Line warning letter issue and if you have the decision

1 maker on the stand -- and Your Honor, can assess credibility
2 and do the things Your Honor does -- you ask them the
3 questions -- the pertinent questions about what led to the, you
4 know, to the decision to assign work that night. And then that
5 was the basis for the issuance of the warning letters. And I
6 mean, I don't need to formulate anything on my side. Our side
7 is they were assigned start times as we always do. 39 didn't
8 show up, and they were issued warning letters to those 39,
9 nobody else, like we've done to other people, right.

10 But I don't know -- they keep making arguments about this
11 posting in the driver's room or the argument that you should've
12 called them by 9.am. on Friday for Saturday work, even though
13 nobody has ever said that. And so I'm trying to figure out
14 what their Wright Line theory is --

15 JUDGE WEDEKIND: Well, let's just --

16 MR. LUNDGREN: -- because I don't know.

17 JUDGE WEDEKIND: I think we should explore that and we do
18 it on the record. So if this witness was the decision maker
19 about whether to proceed with the mat pour, for those involved
20 in that decision -- do -- do you agree that what she knew at
21 that time is relevant to the Wright Line?

22 MR. BERGER: I think what the Wright Line analysis is
23 focused on is what was the basis for the discipline. The
24 events that led up to the decision to call the mat pour, which
25 are the, you know, the focus of Glacier's misrepresentation

1 claims are just not material to that. It's all prefatory to
2 that, so I don't understand.

3 JUDGE WEDEKIND: So you're not -- okay. So you're not
4 going to argue. Neither the GC nor the Union is going to argue
5 that the fact that they went ahead with the mat pour -- the
6 fact that they disciplined the employees even though they knew
7 beforehand before they even scheduled this that the Union had
8 instructed them not to show up. They went ahead and
9 disciplined them anyway. That doesn't suggest an unlawful
10 motive. You're not going to argue with that.

11 MR. LUNDGREN: Your Honor --

12 MS. CHEREM: Wait, we need to --

13 JUDGE WEDEKIND: I'm sorry. It was a little confusing.

14 MS. CHEREM: Yeah. I just don't --

15 JUDGE WEDEKIND: You're not going to argue that the fact
16 they went ahead and disciplined the employees, even though they
17 knew -- I'm turning this into a negative. Are you going to --
18 are you going to argue that motive is established -- unlawful
19 motive is established in part because they disciplined them for
20 not showing up, even though they knew even before even going
21 forward that the Union had instructed them not to show up. For
22 whatever reason that was.

23 MS. CHEREM: Whether --

24 JUDGE WEDEKIND: Contract based or whatever.

25 MS. CHEREM: Whether or not the Union instructed the

1 drivers to do anything is not part of my theory. To my
2 knowledge -- I mean, I can -- I'll have to go off the record
3 and get guidance, but --

4 JUDGE WEDEKIND: Oh, come on. Now, you don't know what
5 your theory is?

6 MS. CHEREM: No, no, no. I don't believe -- I don't
7 believe that the Union -- whether or not the Union issued
8 instructions to anybody is the basis for our Wright Line
9 theory.

10 JUDGE WEDEKIND: It's not about what -- whether the Union
11 issued instructions --

12 MS. CHEREM: I thought that was your question. I'm sorry.

13 JUDGE WEDEKIND: -- about rumors. I mean -- do you care
14 at all --

15 MS. CHEREM: Maybe I misunderstand your question.

16 JUDGE WEDEKIND: -- do you care at all? Does it matter
17 whatsoever the Union -- the company has heard any rumors about
18 whether the employees were going to show up?

19 MS. CHEREM: Can I just take a moment to think about it,
20 because I'd been asked the question, like, ten different ways.
21 And I want to make sure that I'm answering correctly?

22 JUDGE WEDEKIND: Well, can the Union answer that question?

23 MR. BERGER: I -- I'd probably also need a moment to
24 address the question that you're asking.

25 JUDGE WEDEKIND: Okay.

1 MS. CHEREM: I just want to make sure I'm understanding it
2 correctly. Only because I've had several iterations, and I --

3 JUDGE WEDEKIND: Well, does that relate at all to what
4 you're trying to figure out -- what the Wright Line theory is?

5 MR. LUNDGREN: Yeah. It does, Your Honor. I -- I know
6 the State Court record's voluminous, so let me give you the
7 cliff notes version.

8 JUDGE WEDEKIND: Okay.

9 MR. LUNDGREN: You're -- you're halfway there. The rumors
10 in the morning were the drivers had instructed -- or the Union
11 had instructed the drivers not to respond to work. For that
12 reason, we were not going to mobilize the mat pour after some
13 confirmation from the Union.

14 JUDGE WEDEKIND: Okay.

15 MR. LUNDGREN: Ted Herb was asked to call Rick Hicks
16 because they had been discussing the mat pour during the strike
17 and get some confirmation. Rick Hicks said don't worry --
18 well, he said, we have specifically instructed the drivers to
19 respond to dispatch. That was communicated to Melanie. On
20 that basis, they had assurances that the drivers knew there was
21 a mat pour that night. All we need to do is give them their
22 assigned start times. They'll call in. They'll be there like
23 they always will.

24 JUDGE WEDEKIND: Okay.

25 MR. LUNDGREN: And so --

1 JUDGE WEDEKIND: So is any of that history relevant to
2 whether they had an unlawful motive?

3 MR. LUNDGREN: It's a warning letter.

4 JUDGE WEDEKIND: In your mind?

5 MR. BERGER: I want to take a moment. I mean, this is --
6 you're proposing something that is interesting, but I just
7 haven't given it thought, so --

8 JUDGE WEDEKIND: Well, the question is whether it's
9 relevant or not.

10 MR. BERGER: Yeah. Can -- can we take a break?

11 JUDGE WEDEKIND: Ok, yeah. Let's take a break. All
12 right.

13 MS. CHEREM: Can we make it, like, a few extra minutes so
14 I have time to run to the restroom?

15 JUDGE WEDEKIND: Sure. You can have five, ten, yeah.
16 (Off the record at 3:43 p.m.)

17 JUDGE WEDEKIND: All right, do you want to -- General
18 Counsel, do you want to clarify what the theory is and whether
19 any of this is relevant to the mat pour 8(a)(3) Wright Line
20 allegation?

21 MS. CHEREM: Yes, Your Honor. I'm happy to clarify, and
22 then feel free to correct me if you have any sort of different
23 opinion. The General Counsel will not be arguing that rumors
24 for any knowledge thereof, and whether or not they decide to
25 move forward based on any rumors is in any way evidence of

1 retaliation.

2 JUDGE WEDEKIND: Okay. Does the Union agree with that?

3 MR. BERGER: We agree with that.

4 JUDGE WEDEKIND: Okay.

5 MS. CHEREM: I will say, Your Honor, whether this is -- I
6 just want to state the caveat that we may choose to argue that
7 the decision to move forward with the strike -- or excuse me --
8 with the mat pour in such close succession to when the strike
9 ended is retaliatory, but without regard to any rumors, and
10 whether or not those occurred.

11 JUDGE WEDEKIND: And without --

12 MS. CHEREM: And conversations that happened.

13 JUDGE WEDEKIND: And conversations.

14 MS. CHEREM: And any conversations. I am not getting into
15 the conversations.

16 JUDGE WEDEKIND: Okay. Does that help?

17 MR. LUNDGREN: It -- it doesn't because there was --
18 everybody knows the strike ended that morning. And when there
19 was rumors that they weren't going to report, we weren't going
20 to mobilize the mat pour. And then we reached out through GLY
21 to the head of the Union -- head of 174, and he said we have --
22 are you going to service that mat pour tonight. We have
23 specifically instructed the drivers to respond to dispatch.
24 I'm going to ask you again. Are you going to do that mat pour
25 tonight. We have instructed the drivers to respond to

1 dispatch. That's communicated to Melanie O'Regan at Glacier.
2 She says: Okay. Do you think we should call them again? Herb
3 says why? He couldn't of been any clearer. All right.
4 Well, --

5 JUDGE WEDEKIND: Call who again? The drivers?

6 MR. LUNDGREN: Call Hicks again.

7 JUDGE WEDEKIND: Call Hicks again, okay.

8 MR. LUNDGREN: And then, okay. She tells Adam Doyle,
9 we're going ahead with the mat pour. They make the start list
10 and they make the callouts, as they always do. Here's your
11 start time. It's posted before 5 p.m. Nobody says they're not
12 coming. You know, when the drivers show up, they start to
13 realize right after, you know, -- it's already been mobilized
14 at this point. There's a 110 people in South Lake Union.
15 Streets are shut down. You have con -- subcontractors,
16 contractors, police blocking traffic, and you don't have any
17 drivers.

18 JUDGE WEDEKIND: So I mean --

19 MR. LUNDGREN: And that's the whole reason that this
20 happened. And then the record shows that Mr. Hicks and the
21 Union did not instruct the drivers to respond to dispatch. And
22 Mr. Hislop's testimony in the record is that, in fact, he told
23 them don't go back to work until Monday.

24 MS. CHEREM: Your Honor?

25 MR. LUNDGREN: So if they're testifying --

1 JUDGE WEDEKIND: Wait, wait, wait --

2 MR. LUNDGREN: -- so if they're going to say because of
3 some notice in the, you know -- that Brent Nordyke sometimes
4 gives drivers in the driver room when they're not in the driver
5 room that day, that somehow that's evidence of animus, and we
6 shouldn't have went forward with that mat pour. We violated
7 the labor agreement and my God, it says in 8(a)(3), you must
8 have got it because they went on strike; I've got to take that
9 evidence.

10 JUDGE WEDEKIND: Well, okay. But you keep coming back to
11 this posting in the driver's room. I asked you. Are you
12 arguing that this posting in the driver's room shows animus?

13 MR. BERGER: No. I think there's continuing to be a
14 mischaracterization of the Union's position. The Union's
15 position is the animus comes from the company's knowledge that
16 drivers were exercising what, we believe, were their actual
17 contractual rights, but more pertinently what they asserted,
18 and the company knew were their contractual rights.
19 Nevertheless, moved forward with scheduling the mat pour.
20 What -- what conversations that Mr. Hicks and Herb had is not
21 relevant to that question, whether the company was aware of the
22 drivers exercising their contractual rights and then
23 subsequently disciplining them.

24 JUDGE WEDEKIND: But he -- would you address the -- he
25 keeps coming back, so apparently, he thinks it's very

1 significant about this posting in the -- in the drivers room.

2 MR. BERGER: Oh. That's one piece that we think is part
3 of past practice that is inconsistent with, but he -- I think
4 there's -- there's harping on this one particular point when
5 there's many more elements of the contract that the drivers
6 were relying on. So that -- that particular piece is not
7 central to the Union's stand.

8 JUDGE WEDEKIND: Okay. And what is that -- any of this
9 have to do with posting something in the driver's room?

10 MR. LUNDGREN: Well, they -- they keep bringing the issue
11 up when they're cross-examining witnesses. Like, when Mr.
12 Doyle was here, Mr. Armitage, you know, and then Brent Nordyke.

13 JUDGE WEDEKIND: What does this evidence have anything to
14 do with the driver's room?

15 MR. LUNDGREN: This evidence has -- well, let me go to --
16 he says that the protected activity was -- was exercising their
17 right to not come to work that night. Is that the theory now,
18 because that's new? That's the theory?

19 MR. BERGER: That's not new, but that is the Union's
20 theory.

21 MR. LUNDGREN: Okay. Well, they haven't made a prima
22 facie case on that because no driver ever called dispatch or
23 anyone else at Glacier and said, hey, I'm not coming into work
24 tonight because I think I'm not obligated to.

25 JUDGE WEDEKIND: Can I interrupt for you -- the fact that

1 they had -- haven't made a prima facie case suggests that you
2 should stop. I'm asking you. What -- why is this relevant?
3 What you're going through right now with this witness, why is
4 it relevant to some -- whether you posted something in the
5 driver's room before the mat pour?

6 MR. LUNDGREN: It isn't relevant.

7 JUDGE WEDEKIND: Okay. Then why are you arguing?

8 MR. LUNDGREN: It's their argu -- their argument is that
9 somehow, we didn't -- we deviated from some kind of practice
10 when we mobilized the mat pour that day. And so I want to show
11 why we mobilized the mat pour that day, and why we expected the
12 drivers to work up -- to show up -- because the President of
13 the Union said they've been instructed to respond to dispatch.
14 He's their agent, and we posted the start times like we always
15 do in compliance with the labor agreement.

16 JUDGE WEDEKIND: I'm not making the connection between
17 your arguments. You're -- you say you're concerned about the
18 Union's argument that you didn't post something in the driver's
19 room.

20 MR. LUNDGREN: Well, that's just an example of the type of
21 arguments they're making.

22 JUDGE WEDEKIND: But -- but that -- but this doesn't have
23 anything to do with that, and it's already in the record.

24 MR. LUNDGREN: Well, it -- it would though, because the
25 strike was over, right. And normally, you'd be back to work.

1 But there was a concern the drivers have been told not to
2 respond to work, right. And so --

3 JUDGE WEDEKIND: But none -- none of this gives you a --

4 MR. LUNDGREN: If the Union told the drivers at the
5 ratification meeting -- hey, you guys, we're instructing you to
6 get back to work. Then all the drivers would've called this
7 callout posting and got their start time assignments and they
8 would've shown up to work. That's the --

9 JUDGE WEDEKIND: But that still doesn't address the
10 posting in the drivers -- first of all, you couldn't of posted
11 in the driver's room on Thursday because you didn't even know
12 you were going to do the mat pour, right?

13 MR. LUNDGREN: Right.

14 JUDGE WEDEKIND: So --

15 MR. LUNDGREN: I agree.

16 JUDGE WEDEKIND: -- so the Union's only argument, it seems
17 to me based on what I've heard so far, is that you should've
18 waited a week. Is that -- is that what you're arguing? They
19 should've waited a week?

20 MR. BERGER: Yeah.

21 JUDGE WEDEKIND: -- and done the posting and the driver's
22 room?

23 MR. BERGER: Yeah. To be clear -- there's two -- there's
24 two parts to this. With the Union's, I think, want to put into
25 evidence, what the contractual rights are that the drivers are

1 relying on --

2 JUDGE WEDEKIND: Yeah.

3 MR. BERGER: -- and we believe a certain contrary to what
4 Counsel said, there is record of this of the company having
5 knowledge of drivers asserting those contractual rights. And
6 then, the retaliation follows, and that's the Wright Line
7 analysis.

8 JUDGE WEDEKIND: But the bottom line is both the Union and
9 the General Counsel said that what this witness knew -- why she
10 went forward with the mat pour is not -- they're not arguing
11 that that is going to show animus, so why do we need to go
12 through it?

13 MR. LUNDGREN: Because if their argument is purely timing,
14 that's what I was trying to say is -- is I don't have a theory.
15 They were issued 39 warning letters because they were assigned
16 start times, and they didn't show up. And then the response
17 is, but a strike has just ended so it must have been because of
18 the timing even though there was an intervening event that led
19 to the warning letters. Because of that timing, it must have
20 been motivated by some kind of anti-strike animus.

21 In a typical case, I would put on the nonretaliatory
22 reason that we mobilized the mat pour because the head of the
23 Union told us they have instructed to be there that night. And
24 then how we gave the start time to the drivers.

25 JUDGE WEDEKIND: That's already in evidence. All this is



1 already in evidence.

2 MR. LUNDGREN: Okay. Well, and that was my point was --
3 yes, you can read it, but typically, you would -- with the
4 decision maker up there, you would go through the evidence with
5 the decision maker present.

6 JUDGE WEDEKIND: But okay, but -- is there any dispute
7 about the sequence of events -- go ahead.

8 MS. CHEREM: Oh, no. That's what I was going to say. I
9 don't think there is a dispute on the timing of when things
10 occurred. Also, I think we're conflating decision maker
11 because I believe -- and correct me if I'm wrong -- that
12 Melanie testified that she did not -- was not the one to issue
13 those disciplines.

14 MR. LUNDGREN: She testified she was involved. She's the
15 head of the facility. Brian Sleeper wrote the letters, and she
16 knew they were being written.

17 MS. CHEREM: She knew they were being --

18 MR. LUNDGREN: Mr. Sleeper -- well --

19 MS. CHEREM: I understand he's deceased, but she didn't
20 testify that she decided to issue them.

21 MR. LUNDGREN: Well, then I guess because you waited six
22 years to bring this case, you know, my client has been
23 prejudiced because Mr. Sleeper passed away before -- so I guess
24 I don't have a case if you're going to say that Ms. O'Regan
25 can't testify about the reasons the warning letters were

1 issued. She knew --

2 MS. CHEREM: I'm not saying that she can't testify the
3 reasons the warning letters were issued.

4 MR. LUNDGREN: Well, how am I conflating decision maker?

5 MS. CHEREM: Because you were talking about the decision
6 maker, who decided to move forward with the mat pour, as
7 opposed to who decided to issue the disciplines.

8 MR. LUNDGREN: Ms. O'Regan was head of the facility and
9 the region and was in -- and knew and was involved -- knew that
10 those warning letters were going to be issued before they were
11 issued.

12 JUDGE WEDEKIND: Counsel, hasn't the Union asked the
13 witnesses if whether they have heard rumors about the strike --
14 some of these managers?

15 MR. BERGER: I -- I think there's a lot of confusion about
16 the two different schedules for the mat pour. There's prior to
17 the commencement of this strike.

18 JUDGE WEDEKIND: Oh, right.

19 MR. BERGER: Root knowledge of the mat pour, which we
20 believe is evidence the company was put on notice by the Union
21 that a strike was forthcoming. Then there's this separately at
22 the conclusion of this strike --

23 JUDGE WEDEKIND: Right.

24 MR. BERGER: -- rumors that drivers -- apparently, the
25 comp -- Employer were under the impression that the -- the

1 Union, subsequent to the end of the strike had instructed
2 drivers not to answer their phones.

3 JUDGE WEDEKIND: All right. So let's come back to the
4 whole reason we spent this time. I think there was an
5 objection to going through this --

6 MS. CHEREM: Probably.

7 JUDGE WEDEKIND: -- evidence.

8 MS. CHEREM: I honestly don't remember at this point.

9 JUDGE WEDEKIND: And apparently, the purpose is you want
10 to put on evidence about since she was, A: involved in the
11 decision, what -- why she decided to go ahead with the mat
12 pour?

13 MR. LUNDGREN: Right. What -- what the events that led
14 to -- to the decision to mobilize the mat pour, and the
15 assignment of the start times to the drivers that afternoon.
16 And then when 39 drivers didn't respond to those start times,
17 they were issued warning letters.

18 JUDGE WEDEKIND: And the problem is that this overlaps
19 with the State Court --

20 MR. LUNDGREN: It does.

21 JUDGE WEDEKIND: -- issues. And your concern, but
22 first -- you think it's already in. And whether this goes
23 beyond the State Court record. Is that -- that's the whole
24 problem or what?

25 MS. CHEREM: Well, I thought yesterday we had reached an

1 agreement to not to relitigate this particular issue.

2 JUDGE WEDEKIND: I know, but now -- now, we're exploring
3 the 8(a)(3) issue and motive --

4 MS. CHEREM: Right.

5 JUDGE WEDEKIND: -- and I mean, unless you can say --
6 unless you're going to stipulate that all the evidence related
7 to what this witness knew and make a decision to go ahead with
8 the mat pour is already in the record.

9 MS. CHEREM: That's what I was actually just thinking
10 about that, like, we can maybe discuss, like, there may be a
11 disagreement about what actually occurred. But there may be an
12 agreement as to that's what Respondent believe occurred.

13 MR. BERGER: To be clear, Ms. O'Regan gave a deposition in
14 the State Court action fully explaining the sequence of events
15 of August 18th, 2017. So what led from the decision -- from
16 hearing about these rumors to service -- to deciding to service
17 the mat pour. We believe that's all in the State Court
18 records.

19 JUDGE WEDEKIND: Okay, but you know, I don't have to rely
20 on the State Court record for the 8(a)(3), right? I mean,
21 normally I wouldn't. So if you're saying I can rely on the
22 State Court record and rely on her deposition in making a
23 decision on 8(a)(3), fine. Then maybe we don't have to go
24 through it. I should just take her tes -- deposition as true
25 of what she knew and why she issued or why she went forward

1 with the mat pour.

2 MR. BERGER: From the Union's perspective, I think that's
3 okay.

4 JUDGE WEDEKIND: Why she went forward with the mat pour?

5 MR. BERGER: Correct.

6 JUDGE WEDEKIND: Not why she should --

7 MR. BERGER: Correct.

8 MS. CHEREM: Correct. I think that's the distinction.

9 JUDGE WEDEKIND: Okay. All right.

10 MR. LUNDGREN: Yeah. I mean, if they're going to
11 stipulate that the State Court record and the explanation that
12 Ms. O'Regan gave in her declaration and her deposition is true,
13 and Your Honor is willing to rely upon that without being able
14 to assess, you know, the questions in live testimony -- I think
15 that is an efficient way to proceed.

16 JUDGE WEDEKIND: And that -- that would be consistent with
17 your prior stipulation. There won't be any conflict, right?

18 MR. BERGER: I believe so. Again, we're not to be -- I
19 don't know not having looked at every single document recently
20 in the State Court record whether there was any discussion
21 about the basis for issuing the discipline. I mean, the
22 Union's not going to stipulate that.

23 JUDGE WEDEKIND: Right. And we understand that, and I
24 understand that. We're just talking about why she went forward
25 with the mat pour. Her deposition I will rely on that.

1 MR. LUNDGREN: In the events that led to mobilizing the
2 mat pour and assigning the start times that afternoon and
3 believing that mat pour would happen. That's in the record.

4 JUDGE WEDEKIND: I'll rely on that, the State Court
5 records. Great.

6 MS. CHEREM: Yes.

7 JUDGE WEDEKIND: Can we get the witness back up?

8 MR. LUNDGREN: Sure.

9 JUDGE WEDEKIND: Thanks.

10 MR. LUNDGREN: Ross, could you pull up Joint Exhibit 3
11 back up, please?

12 **RESUMED DIRECT EXAMINATION**

13 Q BY MR. LUNDGREN: I'm showing you Joint Exhibit 3 again,
14 Ms. O'Regan. And you see where it says number 15, restricting
15 production or interfering with others in the performance of
16 their jobs or engaging or participating in any interruption of
17 work or production? Do you see that?

18 A I see that.

19 Q And what is number 15? What does that come from?

20 A That comes out of the Glacier work rules.

21 MR. LUNDGREN: Ross, could you put up General Counsel
22 Exhibit 11, please?

23 Q And if we look at number 15, is that the rule that's
24 being -- looks like the exact same language to me. But tell
25 us, is that the rule that's being referred to? It's 15.

1 A Yes. It is.

2 Q Okay. And what knowledge do you have about what conduct
3 occurred and lead to the issuance of the warning letters? What
4 happened?

5 A Those warning letters were issued to the 39 drivers who
6 failed to report for their assigned start times on the early
7 morning of August 19th.

8 Q And what -- how would that violate work rule 15?

9 A Well, it interfered with our ability to do the work?

10 Q And how did it interfere with your ability to do the work?

11 A Because we didn't have enough drivers, so the drivers that
12 did come to work was an insufficient number to deliver the mat
13 pour.

14 Q And were the drivers communicated their start times that
15 day? Do you know?

16 A They were.

17 Q And how do you know?

18 A Well, I know because part of the time I was in the
19 dispatch office listening to that communication. And -- and
20 then, I had spoken with Adam to make sure that everybody was
21 called and that -- to make sure that we had posted before 5:00,
22 which was actually our obligation to do, but calls were not an
23 obligation, but we have a contractual ob -- obligation to post
24 for work before 5 p.m. on the day preceding the work.

25 Q Okay. And what investigation -- there's 39 warning

1 letters that were issued. What investigation, if any, was done
2 to determine who the 39 drivers were who didn't show up?

3 A Well, the drivers who showed up clocked in.

4 MR. LUNDGREN: Ross, could you please show us General
5 Counsel Exhibit 25 please? And please scroll down. Next page.

6 Q BY MR. LUNDGREN: Okay. I'm showing your General Counsel
7 Exhibit -- we'll start at the beginning -- show you General
8 Counsel Exhibit 25. And if you'll -- you see this is a -- an
9 email -- it's in evidence -- an email from Adam Doyle to Justin
10 Denison with the subject drivers not reporting Saturday. Do
11 you know why Adam Doyle was having this communication with
12 Justin Denison?

13 MR. BERGER: Objection. Calls for speculation.

14 MR. LUNDGREN: I'm asking her if she knows.

15 A I do. It's the no-show list from the August 19th mat
16 pour.

17 Q BY MR. LUNDGREN: And were you involved in the issue of
18 acquiring the information being discussed in this email?

19 A Yes, I was.

20 Q And who is Justin Denison?

21 A Justin Denison is the operations manager. Adam Doyle
22 reported to Justin Denison.

23 Q And who did Justin Denison report to?

24 A To me.

25 Q And were you aware that Adam Doyle and Justin Denison were

1 having this -- these communications about the no-show list?

2 A Yes.

3 MR. LUNDGREN: Please go to the next page of General
4 Counsel Exhibit 25. Please go to the next page.

5 Q BY MR. LUNDGREN: Now, we see a list of drivers here,
6 starting with Tom Llanos. Do you know what this is?

7 A I'm assuming this is the 39 drivers that failed to report
8 to work on August 19th.

9 Q Do you remember that information being gathered?

10 A Yes.

11 MR. LUNDGREN: Keep going down. Ross, next page. Could
12 you rotate that, please.

13 Q BY MR. LUNDGREN: Now, I'm showing you page 1215, which is
14 a list of employee numbers and drivers with a comment that says
15 Melanie O'Regan next to it. Do you see that?

16 A Yes.

17 Q Do you know what this is?

18 A I believe this is the list of drivers who were -- showed
19 up for work and were paid.

20 Q So were these drivers given start times in the same manner
21 the 39 drivers who didn't show up were given start times?

22 A Yes, all the drivers were informed the exact same way.

23 Q And these -- how many drivers is this?

24 A Is it 22?

25 MS. CHEREM: Objection. I think that speaks for itself.

1 MR. LUNDGREN: Sure.

2 Q BY MR. LUNDGREN: Well, I count 22.

3 A 22.

4 Q From your memory, is that the correct amount of drivers
5 who responded to work the mat pour that day?

6 A It is.

7 Q And how were -- what happened? Were those drivers
8 compensated for their time? What happened?

9 A They were paid eight hours.

10 Q What discipline, if any, did the drivers who showed up for
11 the mat pour receive?

12 A None.

13 Q What was the factor that determined whether a driver
14 received a warning letter for that August 19th conduct?

15 MR. BERGER: Objection. Lack of foundation. I think
16 testimony that exists is that she was not involved in that --
17 in making the decision to this point.

18 JUDGE WEDEKIND: I thought it was the opposite. But --

19 MR. LUNDGREN: Yeah, she was involved.

20 JUDGE WEDEKIND: I thought she already testified she was
21 involved.

22 Did you testify you were -- you were involved?

23 THE WITNESS: I was, and I did, and I am.

24 JUDGE WEDEKIND: Okay. Go ahead.

25 Q BY MR. LUNDGREN: What was the factor that determined

1 whether a driver received a warning letter for that August 19th
2 conduct?

3 A The factor -- the only drivers who received that warning
4 letter were the drivers who failed to report to their assigned
5 start time for the August 19th mat pour.

6 Q And do you know whether management below you discussed
7 this issue with any of the drivers prior to the issuance of the
8 warning letters?

9 A I don't know.

10 Q Would -- would it be typical to discuss it with the 39
11 drivers prior to issuance of the warning letters?

12 MR. BERGER: Objection. Lack of foundation. Calls for
13 speculation. The -- the question was about what those under
14 her would typically do, which she's not necessarily present in
15 talking to drivers.

16 JUDGE WEDEKIND: Yeah. You know, typically do when they
17 don't show up for a mat pour on a Saturday, or just typically
18 do --

19 MR. LUNDGREN: Well, yeah. I'll just strike it.

20 JUDGE WEDEKIND: Okay.

21 MR. LUNDGREN: I'll --

22 JUDGE WEDEKIND: Yeah.

23 Q BY MR. LUNDGREN: Let's go back to the warning letters for
24 the August 11th event for just a moment.

25 MR. LUNDGREN: And Ross, could you page up to the -- the

1 Byron Baker warning letter. There it is.

2 Q BY MR. LUNDGREN: Do you see where the warning letter
3 says, while on the clock you did not deliver the concrete to
4 the job; do you see that?

5 A I do.

6 Q How -- how do you view the seriousness of that conduct?

7 A Well, I think I already said it was -- it -- it was the
8 most egregious conduct that I've ever seen in my 38 years of
9 abuse of equipment, and irresponsibility with the product and
10 the equipment.

11 MR. LUNDGREN: No further questions, Your Honor.

12 JUDGE WEDEKIND: Any cross?

13 MS. CHEREM: Yeah. Could I have just a minute?

14 JUDGE WEDEKIND: Sure. Off the record.

15 (Off the record at 4:27 p.m.)

16 **CROSS-EXAMINATION**

17 Q BY MS. CHEREM: Hi, Melanie. It's good to see you again.
18 I'm going to ask you a few follow-up questions. I'd like to
19 turn your attention to Respondent's Exhibit either 8 or 9,
20 which is the one you have in front of you, the big chart. Got
21 it?

22 A Yeah. I think.

23 Q And this is the chart that you got from Brent about his
24 in -- investigation into what happened on August 11th, right?

25 A This is the chart that Brent created.



- 1 Q Right.
- 2 A Yes.
- 3 Q And how did you get the chart?
- 4 A I was just shown this at some point. I don't know if it
- 5 came from Brent or from Justin directly --
- 6 Q Okay.
- 7 A -- from Brent. But either from Brent to Justin --
- 8 Q Okay.
- 9 A -- to me, or --
- 10 Q Do you remember what format in which you initially saw it,
- 11 like electronic or paper?
- 12 A I recall something that had a little bit more like
- 13 handwritten notes on it or some original format. I think this
- 14 was compiled more officially at a later time.
- 15 Q Okay. Do you remember when you first saw the document?
- 16 A Not specifically.
- 17 Q Do you remember if it was during the strike or after the
- 18 strike?
- 19 A I think -- I think we began working on this pretty
- 20 quickly.
- 21 Q And do you recall any conversations with Brent about this
- 22 document?
- 23 A I don't know that I had any direct conversations with
- 24 Brent.
- 25 Q And do you recall any conversations with Justin about

1 this -- the document?

2 A I would have discussed, you know, from a cursory
3 perspective, the drivers that were -- that we were looking to
4 discipline for leaving the concrete on the truck, and failing
5 to properly park the equipment, and wash it out.

6 Q When do you recall having that conversation with Justin?
7 Well, let me back up. Was it one conversation or multiple
8 conversations with Justin?

9 A Oh, it -- it's hard to say, but I -- I imagine that this
10 went over a period of time.

11 Q Okay. So during the -- what do you recall about these
12 conversations with Justin over a period of time?

13 A We just put a list together based on the information that
14 Brent collected through his investigation of the drivers who
15 failed to unload their trucks and properly clean them out, and
16 return them to their parking places.

17 Q Okay. And the -- the list that you created, are you --
18 what -- what list are you referring to?

19 A The list of the drivers that were issued disciplinary --

20 Q Got it.

21 A -- notices based on the investigation of Brent --

22 Q Okay.

23 A -- Brent's investigation.

24 Q And -- and just to be clear, you didn't conduct any
25 independent investigations beyond what Brent had done

1 besides --

2 A I did not.

3 Q -- what's in this document, correct?

4 A I did not.

5 Q Okay. Besides you and Justin, was there anybody else
6 involved in the decision making process to issue disciplines?

7 A I'm sure Brian Sleeper was involved.

8 Q Do you recall what his involvement was?

9 A Just involved with the discussions.

10 Q And what discussions do you recall having with Brian
11 Sleeper?

12 A The discussions of who was going to be disciplined and on
13 what basis.

14 Q Okay. Do you re -- do -- what -- what specific
15 recollection do you have of the conversations with Brian
16 Sleeper about that?

17 A I don't have any specific recollection of any of these
18 discussions, but we did issue a list of drivers that we decided
19 would be issued disciplinary notices for those -- for the
20 misconduct and the work -- violation of the work rule.

21 Q Okay. And when you say we issued a list of drivers, does
22 that mean you issued it to Brian Sleeper, or did I
23 misunderstand?

24 A Well, we created lists --

25 Q Okay.

1 A -- from this.

2 Q And then you gave that list to Brian Sleeper? Or did I --

3 A I --

4 Q -- misunderstand --

5 A I can't tell --

6 Q -- your testimony?

7 A -- you exactly who did what specifically.

8 Q Okay.

9 A But --

10 Q So it sounds like you don't have specific recall of the

11 steps of --

12 A Yeah.

13 Q -- the decision making --

14 A That's a lot --

15 Q -- right?

16 A -- a lot of minutia six years later as to --

17 Q Sure.

18 A -- what conversation did you have with whom?

19 Q Sure. All right. And do you have Joint Exhibit 2 in

20 front of you? It's the smaller packet with the --

21 A Yes. Right here.

22 Q -- August meeting? Okay.

23 A This?

24 Q Yes. Thank you. Okay. Do you remember when, in relation

25 to the August 28th date on the discipline letters, you made the

1 decision to issue the discipline?

2 A Well, I think the decision to iss -- issue the discipline
3 was made very quickly. So probably Monday, the -- whatever
4 Monday was -- the 14th.

5 Q The Monday after the August 11th start of the strike?

6 A Right.

7 Q Okay.

8 A But we had to wait for Brent to do the investigation. It
9 took a lot of unraveling, you know, because it was -- it was a
10 very frenzied day so we had to --

11 Q Sure.

12 A -- pull delivery tickets, look to see which loads were
13 delivered.

14 Q Okay.

15 A You know, he -- he went through a very thorough
16 investigation process.

17 Q Yeah.

18 A And we had to wait for his findings, which I'm not sure
19 when they were officially completed.

20 Q Okay. And so when you say we decided on that Monday the
21 14th after the strike, who's we?

22 A Well, me --

23 Q Okay.

24 A -- and Justin.

25 Q And what did you decide on that Monday after the strike?



1 A That we would be issuing discipline -- disciplinary
2 warning letters to the drivers that failed to deliver their
3 loads, and/or wash out their trucks properly, and park them.

4 Q Okay. So tracking correctly. So you decided on Monday
5 you're going to do the disciplines and you were just waiting to
6 figure out who fell into that -- to those categories?

7 A Correct.

8 Q Based off of Brent's investigation, right?

9 A We start that discussion, I'm sure, Monday morning.

10 Q Okay.

11 A Maybe Friday afternoon.

12 Q Okay.

13 A I think I mentioned it was an unfathomable event.

14 Q Yeah, you mentioned that. But there are no questions
15 pending right now. So give me just a second to catch up on my
16 notes. Okay. Between the August 20- -- the -- the discipline
17 issuing on August 28th, 2017, and the -- I'm looking at the
18 cover sheet of Joint Exhibit 2 -- one, two, three, four, five,
19 six disciplines that were rescinded on September 12th, 2017.
20 You didn't conduct any additional investigation, did you?

21 A Well, there may have been more discussion, which is maybe
22 what led to our discussion to take a look at these drivers who
23 had maybe been identified as those who had assisted, or tried
24 to make an effort -- take an extra effort to take care of the
25 equipment, hand it over to a supervisor.

- 1 Q Got it.
- 2 A So I think there was ongoing discussion.
- 3 Q And what of that discussion do you recall?
- 4 A I -- I don't recall the specifics of it, but I know I was
5 involved with the dec -- decision to rescind for those six
6 drivers.
- 7 Q And so who decided to rescind it, did you?
- 8 A Well, ultimately, I made all those decisions.
- 9 Q Okay. And so what did you -- do you remember what
10 specific information you received --
- 11 A I think --
- 12 Q -- in order to --
- 13 A -- by that time --
- 14 Q -- make that decision?
- 15 A -- we had more information about, you know, Justin
16 remembered, oh, so-and-so handed me the keys, and he -- he made
17 an effort. And so there was a -- we made a distinction between
18 the drivers that just literally abandoned their vehicles and
19 those who really tried to do what they felt was better than
20 just abandoning their vehicle.
- 21 Q So those that followed the instructions that they got?
- 22 A No, no. Those -- none of those drivers followed the --
- 23 Q Okay.
- 24 A -- instructions.
- 25 Q Well, which instructions are you referring to, the ones

1 to --

2 A The ones that --

3 Q -- finish your job?

4 A -- we gave --

5 Q Got it.

6 A -- to finish the job.

7 Q So you're referring to the ones about not -- about you --
8 okay. Just finishing your job. Just a second. Do you recall
9 how you got the information that those particular drivers that
10 had the rescission letters issued September 12th should be
11 reevaluated?

12 A No. But I think Brian was involved. That's why I say I
13 think Brian had a lot to do with this because I don't recall
14 the detail of, like, those particular drivers or --

15 Q Right.

16 A -- why the decision was made. But there -- we definitely
17 had a distinction between those who made an effort to --

18 Q Um-hum.

19 A -- assist us and those who literally just --

20 Q Okay.

21 A -- walked away.

22 Q So and when you say to assist us, what do you mean by
23 that? Is that like -- go ahead.

24 A Well, as I said, the yard was a complete disaster. It had
25 to be triaged. So some drivers said they handed the key to

1 Justin and said, hey, that's my truck over there. It has a
2 load on, you know. So they made some effort to try to help
3 mitigate that complete --

4 Q Got it.

5 A -- disaster of the --

6 Q Okay.

7 A -- situation.

8 Q Okay. So you said on the morning of August 11th you found
9 out about the strike a little before -- a little before or
10 around 7, correct?

11 A Well, not before 7, because --

12 Q Around 7?

13 A -- I think it literally started at 7.

14 Q Okay. Minutes -- within minutes of the strike starting
15 you found out about it --

16 A Yes.

17 Q -- right?

18 A Yeah.

19 Q Okay. What's the first thing you did after you found out
20 about the strike?

21 A Nothing. I was in my office.

22 Q Okay.

23 A I was just really waiting to hear what was happening. I
24 didn't -- I didn't do anything.

25 Q You didn't do anything, okay. At some point, though, you

1 reached out to Brian Sleeper that morning, right?

2 A No, actually, the very first thing I did when I heard we
3 were on strike was I contacted Adam Doyle and I said, make sure
4 that these drivers get these trucks' concrete delivered and get
5 back to the yard.

6 Q Um-hum.

7 A And you know, that -- the statement that Adam --

8 Q Right. What he read into --

9 A Exactly.

10 Q -- the radio?

11 A Yeah.

12 Q Right. But maybe I'm misremembering. Didn't you talk to
13 Brian Sleeper before you talked to Adam about what to say over
14 the radio?

15 A Oh, you know, Brian was there, I'm sure. So there was
16 discussion. Brian was involved in all discussions.

17 Q Oh, Brian was physically present?

18 A I think he was there that day.

19 Q At Duwamish?

20 A I think he was, yeah.

21 Q Okay.

22 JUDGE WEDEKIND: So is that a yes that you did speak to
23 Sleeper before you called Doyle?

24 THE WITNESS: I -- I'm pretty sure that I discussed that
25 with Brian before. Yes. I'm going to say yes.

1 Q BY MS. CHEREM: Okay. So the -- but Brian Sleeper, you
2 said, was normally based somewhere else but physically present
3 at the -- at the Duwamish facility --

4 A I --

5 Q -- at that time?

6 A I think he was there. I know I talked to him. If he --

7 Q Okay.

8 A Even if he wasn't there, I know I talked to him. And
9 Brian and I were in constant contact all the time.

10 Q Okay. What do you recall about your conversation with
11 Brian Sleeper --

12 A Brian is the --

13 Q -- that morning?

14 A -- one that -- that -- I think was the one that told me
15 that, make sure these drivers understand that they have an
16 obligation to the deliver the concrete.

17 Q How did --

18 A So that's why I got with Ad -- Adam and said, hey, let's
19 make sure.

20 Q Okay. How did your conversation with Brian Sleeper start?

21 A We're on strike.

22 Q Okay. And --

23 A And Brian said, hey, well, let's make sure the drivers
24 understand they have an obligation to get the con -- con --
25 concrete delivered and get the trucks returned.

- 1 Q Okay. Well, how -- how did you respond?
- 2 A I said, okay.
- 3 Q All right.
- 4 A And I got on the phone with Adam.
- 5 Q Anything else you recall about that conversation with
- 6 Brian?
- 7 A Not specifically.
- 8 Q About how long would you estimate that conversation with
- 9 Brian lasted?
- 10 A I think it would have been pretty short.
- 11 Q And then immediately afterwards you called Adam?
- 12 A I did.
- 13 Q And give him the instructions about what to say over --
- 14 A Exactly.
- 15 Q -- dispatch? And then after that, what did you do?
- 16 A You know, I was in my office for a while, and then at some
- 17 point I did go down to the yard and just had a look around to
- 18 see. Well, because I couldn't see the yard from my office
- 19 so --
- 20 Q Yeah. What -- do you recall what you were doing in your
- 21 office that morning?
- 22 A No. I think we were all sitting around. You know, it --
- 23 it's a pretty overwhelming situation when your group goes on
- 24 strike. So we were all sitting around, oh, we're on strike, I
- 25 mean, you know.

1 Q Okay. Who's we?

2 A The whole -- just that office had a lot of people in it.

3 Q Okay. Who?

4 A Scott Nicholson, Justin, me. There was a sales manager,

5 Greg Mettler.

6 Q Um-hum.

7 A You know, the aggregate managers that don't have anything,

8 and Scott was an aggregate manager. And --

9 Q Sure.

10 A -- you know, but we're all just, oh, we're on strike. Oh,

11 my gosh.

12 Q Okay. So that group of managers that you just listed, do

13 you all share an office, or did you at the time?

14 A No. Like, kind of a bullpen of --

15 Q Got it.

16 A -- offices, so.

17 Q Like cubicle style of something or --

18 A Well, they were offices, but --

19 Q Got it.

20 A -- there's rows of us.

21 Q Okay. So that group of people you just named, you were

22 all sitting around talking about, oh, my gosh, we're on strike?

23 A Yeah, kind of.

24 Q Okay. How long do you think you were talking about that

25 for?

1 A I don't know. It's hard to say, but at some point I went
2 downstairs. So at some point you go, okay, it settles in, you
3 resolve, okay, we're on strike now. Let's clean up the yard.
4 Let's --

5 Q Okay.

6 A How -- how's that going?

7 Q Right. And you said that by the time you went downstairs
8 to the yard, all of the drivers were already back at that
9 point, right?

10 A Yeah. I think everybody had returned by that time.

11 Q And then you said you went downstairs. Anything else you
12 remember happening upstairs before you went downstairs? Just
13 that conversation with the managers?

14 A Yeah.

15 Q Okay. And then you go -- then you went downstairs, out to
16 the yard, and you said you spoke to Justin?

17 A Yes.

18 Q Where --

19 A Justin was in the yard.

20 Q Where was Justin?

21 A He was near a truck, but we were all -- there -- there
22 were trucks everywhere. And he was --

23 Q Okay.

24 A -- he was just part of the process of -- I asked him, what
25 are we doing? We're gathering delivery tickets. We're trying

1 to, you know, take --

2 Q Sure.

3 A -- information of the status of the truck. It was a -- it
4 was triage. We had --

5 Q Yeah. So --

6 A Dave Siemering was leading the charge.

7 Q Okay. How did your conversation with Justin start? What
8 do you -- what do you remember? Did he start talking, did you?

9 A No. I -- I think I just went down and said, how's it
10 going down here? And, oh, my God, that truck's got concrete on
11 it; this one got left stopped, it's not running; this one, you
12 know, he started to tell me. And I said, okay, you know, well,
13 let's do the best we can with what we've got. And I went back
14 upstairs.

15 Q Okay. So he tells you the status of various trucks?

16 A The ones he knew of.

17 Q The ones he knew of.

18 A Yeah.

19 Q And then you respond and you go upstairs. Did you ask any
20 questions about what process they were doing to handle those
21 trucks or what steps they were taking?

22 A No.

23 Q No. You didn't ask about that. Did you give any
24 suggestions about how to handle the trucks?

25 A Dave Siem -- Siemering was running the show, and I didn't

1 need to get involved.

2 Q Okay. I want to turn to the disciplines and rescission
3 letters in Joint Exhibit 3, the ones that are about the August
4 19th mat pour.

5 A Got it.

6 Q You don't need anything specific in front of you. I just
7 wanted to sort of orient you.

8 A Okay.

9 Q You testified earlier that you were aware of the letters,
10 right, before they issued?

11 A Yes.

12 Q And you were involved in the discussion of the list of
13 drivers; is that right?

14 A Yes.

15 Q Okay. What was your involvement?

16 A Just -- we just discussed here's the letter -- here's the
17 drivers, and at the time I'm sure I was told there's 39 drivers
18 that failed to report, we're going to issue disciplinary
19 letters. And I said, good. Let's do it.

20 Q Okay. And you said we. Who are you referring to?

21 A Well, Brian Sleeper and I.

22 Q And at this point, was Brian still on site in Duwamish, or
23 was he elsewhere?

24 A I don't think he was there at the time of the mat pour.

25 Q Okay. Do you recall who initially proposed possible



1 discipline -- that there should be discipline to the drivers?

2 A I don't know if it was his idea or mine, but -- but I was
3 very much in favor of it.

4 Q Okay. Do you recall if you had any meetings about that
5 with Mr. Sleeper?

6 A Oh, we probably communicated telephonically.

7 Q Okay.

8 A And decided that he would write the letter.

9 Q What do you recall about the telephonic communications
10 with Brian about the August 19th related letters?

11 A Just that we were going to issue disciplinary letters --
12 warning letters for drivers who failed to report that day.

13 Q I have one last point of clarification, then I'd just like
14 a second to make sure I didn't miss anything. You mentioned --
15 and maybe I misheard -- a memo saying you wouldn't be approving
16 vacation issues before some mat pours. Did I hear that
17 correctly or did I get that totally wrong?

18 A Oh, no, no. I think what I said was we issued those
19 notices on those large pours in advance so the drivers know
20 that they're expected to be there. And we wouldn't -- it's not
21 not issuing vacation, but sometimes drivers ask for days off on
22 Saturday.

23 Q Um-hum.

24 A So we notify them that it's kind of all hands on deck,
25 that there's an expectation that everybody's going to have to

1 work for the mat pour.

2 Q And is that -- how does that notification work? Or
3 like --

4 A Well --

5 Q -- what -- what -- in what form -- how does that
6 notification occur?

7 A It's posted in the drivers room.

8 Q Okay.

9 A Like I said, the mat pour, which this one was posted
10 for --

11 Q Okay. So the --

12 A -- August 12th.

13 Q There -- there's been ample discussion of notices in the
14 drivers room. That, from your perspective, is what sort of
15 gives the driver a heads up they wouldn't be -- that you
16 wouldn't be approving vacation for that day --

17 A That's not --

18 Q -- is that --

19 A -- vacation. Vacation's different.

20 Q Oh. Sorry. I misunderstood. A day off?

21 A Yeah.

22 Q Okay.

23 A If you just want to take -- so senior drivers, if we don't
24 have enough work, they can request to not be billed out that
25 day.

1 Q Okay.

2 A And -- and then we honor that if we don't --

3 Q Um-hum.

4 A -- need them all. So they have the --

5 Q Yeah.

6 A -- first right of refusal for the work, basically.

7 Q Okay. Can you -- just for the record, can you explain the
8 difference between a day off and a vacation day?

9 A Well, vacation day is something you ask for in advance.

10 Q Okay.

11 A And it gets put on the calendar, gets accepted and put on
12 a calendar. This is just, hey, if you're not really busy
13 tomorrow, you know, I'll take a -- I'd like to just take the
14 day off.

15 Q Okay.

16 A And if we can accommodate that, we'll use the junior
17 drivers.

18 Q I understand.

19 MS. CHEREM: Give me just a moment. But I think I'm done.
20 I have nothing further at this time.

21 JUDGE WEDEKIND: All right. Thank you. Does anyone have
22 any cross?

23 MR. BERGER: I do. And since we're approaching 5:00, I'm
24 wondering if we should continue until 6, I think was one idea
25 that was floated, or else just resume tomorrow. I'm happy to

1 do either.

2 JUDGE WEDEKIND: Okay. Let's go off the record for a
3 minute.

4 (Off the record at 4:54 p.m.)

5 **CROSS-EXAMINATION**

6 Q BY MR. BERGER: Good afternoon, Ms. O'Regan. Again, I'm
7 Ben Berger. I am counsel for Teamsters Local 174. I have some
8 follow-up questions for you about your testimony. I want to
9 show you two documents that have been marked as Charging Party
10 Exhibit 1 and 2.

11 MR. BERGER: May I approach?

12 JUDGE WEDEKIND: Yes.

13 Q BY MR. BERGER: Take a look at those and let me know when
14 you're done. You've taken a chance to look at them?

15 A Yes.

16 Q Okay. My first question is who is Kim Brooks (sic
17 throughout)?

18 A Kim Brooks was the HR manager of the Washington division
19 at this time.

20 Q Okay. Have you previously seen these documents?

21 A I have not.

22 Q Okay. Have you ever been informed about their contents?

23 A Well, I understand it's the notice that we're going to
24 open negotiations.

25 Q Okay. So in May of 2017, were you aware that the Union



1 had sent a notice of termination?

2 MR. LUNDGREN: Objection, relevance. Why are we talking
3 about this?

4 MR. BERGER: I mean, I -- it seems like we're continuing
5 to have the same issue about whether or not -- I know Counsel
6 disagrees that the company's foreknowledge of a potential
7 strike is not relevant, but I think we've been over that, so I
8 think I have the right to probe her -- Ms. O'Regan's
9 foreknowledge of the possible strike.

10 JUDGE WEDEKIND: Why don't you just ask her?

11 MR. BERGER: Okay. Well I mean, I think I have the right
12 to talk about particular -- her knowledge of particular
13 documents, and the information contained therein, that --

14 JUDGE WEDEKIND: You have the right, but if she admits
15 that there is -- I'm just trying to move things along.

16 MR. BERGER: Okay.

17 JUDGE WEDEKIND: The over -- the objection is overruled.
18 Proceed.

19 MR. BERGER: Okay.

20 Q BY MR. BERGER: I think the question was, were you aware
21 the union had sent Glacier a notice of termination of the labor
22 agreement?

23 A Not specifically, no.

24 Q Okay. You say specifically. What more generally were you
25 aware of?

1 A I wasn't aware that these specifics documents were sent to
2 Kim.

3 Q Okay. What was your general knowledge about what the
4 Union had sent the company?

5 A Nothing specifically. I knew we were going to negotiate
6 the contract.

7 Q Okay. That was the extent of your knowledge about the
8 expiration of the Collective Bargaining Agreement?

9 A Correct.

10 Q I see. Were you aware in July 2017 that members of Local
11 174 had taken a strike authorization vote?

12 A Yes.

13 Q Okay. How did you become aware?

14 A I heard from somebody, probably Brian Sleeper.

15 Q Okay. And you're -- you were aware from Brian or someone
16 else that the result of the vote was to approve to authorize a
17 strike?

18 A I had heard a strike vote was authorized.

19 Q In July or August, prior to August 11th, 2017, did you
20 attend any meetings with other Glacier managers to discuss
21 preparations for a potential strike by Local 174 members?

22 A No.

23 Q Were you ever a participant of a meeting with Matthew
24 Hinck in which the possibility of a strike was discussed?

25 A Matt Hinck?

1 Q Do you know who Matt Hinck is?

2 A Yes. Matt Hinck is the environmental guy. I don't recall
3 Matt being in any of my meetings with regard to strike.
4 Anything.

5 Q Okay. Did you ever have -- or let me back up. Do you
6 recall monthly operations meetings?

7 A The operations director -- operations manager does, yes,
8 or did.

9 Q Are you -- do you attend -- or did you attend those
10 meetings?

11 A Sometimes.

12 Q Okay. At any meetings in July or August 2017 that you
13 attended, for -- for the operations meetings, were -- was the
14 possibility of a strike by Local 174 members discussed?

15 A No.

16 Q Did any other Glacier managers ever share with you their
17 own view that Local 174 members might strike during the August
18 12th, 2017 mat pour?

19 A I don't recall hearing anything about a strike during the
20 mat pour. But we weren't thinking strike. We were at the
21 bargaining table hoping -- hoping to get an agreement. We were
22 not strike-centric.

23 Q Okay. And does that mean -- that was all -- even after
24 the expiration of the Collective Bargaining Agreement, you were
25 still not -- ne -- never received any communications from other



1 managers at Glacier about the -- anticipating a possible strike
2 on August 12th?

3 A No.

4 Q Okay. Similarly, did any manager ever discuss with you
5 the need to have a plan in case the Union struck during the
6 August 12th mat pour?

7 A No.

8 Q Are you familiar with someone named George Lambert?

9 A George was a sales guy, maybe?

10 Q Okay. Are you -- to your knowledge, did George have any
11 relationship with -- with the company GLY?

12 A Perhaps he was the salesman that sold the job.

13 Q I see. Are you aware of any conversations that -- or any
14 communications between Mr. Lambert or any other managers with
15 GLY representatives regarding a potential disruption to any GLY
16 project?

17 A So there was discussion with GLY prior to them starting
18 the job. Because that partic -- particular purchase order had
19 liquidated damages. And I had some discussions with their in-
20 house counsel related to we were going into negotiations.
21 There could potentially be a strike. We wanted to make sure
22 that in the event of that forced measure, that we were
23 protected, because of the liquidated damages clause in the GLY
24 purchase order. So that was earlier in the year.

25 Q Earlier in the year. Do you know around -- the

1 approximate time?

2 A Whenever in April, whenever that purchase order is -- was
3 executed.

4 Q I see. Were you -- first of all, do you know who Ted Herb
5 is?

6 A The president of GLY?

7 Q Actually, let me go back and ask just a point of
8 clarification. You said the -- the project, or the job. Which
9 job were you referring to?

10 A I think they call it the Vulcan Block 31 job.

11 Q Sure. Is that where the -- the Google building is now?

12 A If you say so.

13 Q Okay. Are you aware of any -- and I want to focus your
14 attention, prior to the start of the strike -- of any
15 conversation between Mr. Herb and Secretary Treasurer of the
16 Union, Rick Hicks, about the possibility of a strike on the
17 August 12th mat pour?

18 MR. LUNDGREN: Objection. They're getting into Ted Herb,
19 the GLY mat pour, all the things --

20 JUDGE WEDEKIND: Yeah, what are you doing?

21 MR. BERGER: This -- this I -- I -- I need to reiterate
22 really strongly. There are two separate conversations, one of
23 which was the basis for a misrepresentation claim --

24 JUDGE WEDEKIND: Okay.

25 MR. BERGER: -- by Glacier. One of which is entirely

1 unrelated because it occurred prior to the start of the strike,
2 had nothing to do with the subsequent restart of the mat pour.
3 This was a conversation that occurred well before. I mean, I
4 think the only connection is --

5 MR. LUNDGREN: That's -- go ahead, I didn't mean to
6 interrupt.

7 MR. BERGER: -- yeah. I -- my understanding, the only
8 thing the State Court record would show about that is that Mr.
9 Herb's initial conversation formed the -- the basis of the
10 relationship between the two, to then subsequently -- but
11 that's the only aspect of that first --

12 JUDGE WEDEKIND: So -- so we misunderstood which
13 conversation you were talking about? You were asking about?

14 MR. BERGER: I -- I believe Mr. -- Mr. Lundgren either
15 misunderstands, or to me, seems to be conflating the two.

16 MR. LUNDGREN: No, I completely understand it.

17 JUDGE WEDEKIND: Okay.

18 MR. LUNDGREN: And it does relate, because Ted Herb met
19 with Mr. Hicks. This is all in the State Court record. And
20 said, hey, you know, if -- if you're going to target our mat
21 pour, you know, there's going to be \$100,000 in losses. You
22 know, and that would affect a lot of people --

23 JUDGE WEDEKIND: Okay.

24 MR. LUNDGREN: -- outside of Glacier. And then Rick Hicks
25 and Ted Herb have the discussion afterwards, hey, are you going

1 to service a mat pour, last night is the -- you know, strike's
2 over. Yeah, I've instructed the drivers. So what this has to
3 do with any issue in this case is beyond me. The -- the August
4 12 mat pour was never struck, and it was postponed, and it was
5 then mobilized after the strike ended, which is the State
6 law -- Court lawsuit issue.

7 JUDGE WEDEKIND: And was the -- okay.

8 MR. LUNDGREN: And --

9 JUDGE WEDEKIND: It sounds to me like you're only asking
10 about the pre-strike conversation --

11 MR. BERGER: Correct.

12 JUDGE WEDEKIND: -- which doesn't really -- you're not
13 asking it with respect to anything to do with the mat pour?

14 MR. BERGER: I mean, it's the mat pour, but again, I need
15 to distinguish if it was --

16 JUDGE WEDEKIND: The August 12th mat pour?

17 MR. BERGER: -- the August 12th mat pour. Again, it
18 goes -- there's nothing more central --

19 JUDGE WEDEKIND: Okay.

20 MR. BERGER: -- to the question of reasonable precautions,
21 if the Union had a conversation at the behest of Glacier
22 with -- about the --

23 JUDGE WEDEKIND: Okay.

24 MR. BERGER: -- date when they might strike.

25 MR. LUNDGREN: I have another objection --

1 JUDGE WEDEKIND: Okay.

2 MR. LUNDGREN: -- then if that's what he's talking about,
3 it's hearsay.

4 MR. BERGER: My question --

5 MR. LUNDGREN: Why do we care -- why does Melanie --
6 Melanie O'Regan wasn't in the room. Why do we care what Rick
7 Hicks and Ted Herb talked about?

8 MR. BERGER: Again --

9 MR. LUNDGREN: Ted Herb is not an employee of Glacier. He
10 could have whatever conversations he wants with Rick Hicks at
11 all, and why do we care?

12 MR. BERGER: My -- my question was about her knowledge of
13 it, and then I was going to ask her if she was involved in
14 arranging it.

15 MR. LUNDGREN: It's still hearsay. What does it matter if
16 she was involved in arranging it?

17 MR. BERGER: Well, it goes to the Company's knowledge.

18 JUDGE WEDEKIND: Well -- that was -- yeah, overruled.
19 Let's move forward. Go ahead.

20 A I had no knowledge of a prior conversation between Mr.
21 Hicks and Mr. Herb --

22 Q BY MR. BERGER: Okay.

23 A -- prior to the one regarding the 19th mat pour.

24 Q I see.

25 A That's what you're asking, right?

1 Q Correct. I'm not asking about the -- the call on August
2 18th. I'm asking about an earlier call. You're not familiar
3 with that?

4 A Yeah, I don't know anything about that.

5 Q Okay. I think you indicated that you were among other
6 representatives of Glacier, including Mr. Sleeper, part of
7 the -- the bargaining group of the sand and gravel companies;
8 is that right?

9 A Correct.

10 Q And you listed some of those other company
11 representatives, Mr. McKinnon, Mr. Nerdrum. I'm maybe leaving
12 out some others, correct?

13 A Correct.

14 Q Okay. Did you ever rece -- receive any communications by
15 email or verbally -- were you part of any discussions with that
16 group about the possibility of a strike by Local 174 prior to
17 August 11th?

18 A I don't think that was ever at the basis of any
19 conversations that we had.

20 Q In July or August 2017, did you ever provide Glacier
21 managers a statement to issue to customers or members of the
22 public in the event they inquired about a strike?

23 A I did not.

24 Q You'd agree that Teamsters Local 174 is not a party to any
25 purchase orders between Glacier and its customers, correct?

1 A Correct.

2 Q And the load tickets drivers receive that's -- that's not
3 a contract, right?

4 A It's a contract between Glacier and the customer.

5 Q Okay. Not -- it -- the drivers are not parties to that
6 load ticket, correct?

7 MR. LUNDGREN: Objection, relevance and vague and calls
8 for a legal conclusion.

9 MR. BERGER: Well, can I respond?

10 JUDGE WEDEKIND: Sure. Go ahead.

11 MR. BERGER: I -- we heard earlier testimony that the --
12 the basis of the punitive obligation for drivers to finish
13 deliveries was -- was the load ticket.

14 JUDGE WEDEKIND: So -- okay, just go ahead. Can you
15 answer that question? Are the drivers a party to the contract?

16 THE WITNESS: Well, they are to the extent that it's their
17 responsibility to manage the load that's on the truck.

18 Q BY MR. BERGER: Okay, and where is that indicated on the
19 load ticket?

20 A It's implied when they are issued the load ticket, and
21 they fill it out, and they attest that they've delivered it,
22 and --

23 Q And what if they don't attest that they've delivered it.

24 A Well, then it didn't get delivered.

25 Q Let me shift your attention to the day of the August 11th

1 strike. You don't have any personal knowledge of how any given
2 load on a truck came to set up or harden, correct?

3 A Are you asking me if any concrete hardened in the truck
4 that day?

5 Q I'm asking if you're aware of any specific truck, how
6 close it came to hardening, or if it did harden?

7 A No, I don't know.

8 Q You mentioned a potential issue with brakes. Are you --
9 do you have personal knowledge of any truck that was not
10 securely parked with a brake engaged when it was returned to
11 the yard?

12 A As far as I know. But I can't be sure.

13 Q As -- as far as you know, no -- no truck had -- did not
14 have to -- that was a double negative, I apologize. As far as
15 you know, every truck was securely parked with the brake,
16 correct?

17 A So I -- I -- honestly, I can't be sure whether it was, or
18 it wasn't. And that's part of the concern of the safety of the
19 people and the equipment that was on the property.

20 Q Right. I mean, any time a truck is parked, unless you're
21 in it, you just don't know whether it's securely parked or not?

22 A That's true.

23 Q You did not personally witness any interactions between
24 drivers and Mr. Denison and -- and Mr. Siemering, when the --
25 as drivers were returning to the yard, correct?

1 A I don't believe I saw any interactions. By that time, I
2 think the trucks were all just everywhere.

3 Q All the drivers had returned their trucks to the Seattle
4 yard at that point, correct?

5 A They returned their trucks to the Duwamish plant.

6 Q Right. And when I say Seattle yard, I -- I'm using that
7 interchangeably.

8 A Well, there's another yard where they actually park, where
9 they did not return their trucks to.

10 Q I see the distinction that you're making. Fair enough.
11 Shifting gears to talk about the August 19th mat pour -- or
12 actually, the day prior, August 18th, when the scheduling of
13 the mat pour was happening. Did you review any of the
14 Collective Bargaining Agreement provisions that -- in deciding
15 whether or not to go forward with the mat pour?

16 A No.

17 Q Did you instruct anyone else to review the --

18 A No. The contract had no bearing.

19 Q I think you mentioned when counsel for the -- the General
20 Counsel was asking you about the investigation process for --
21 for the August 11th -- events of August 11th, why you did not
22 interview or instruct anyone to interview drivers. I think,
23 correct me if I'm wrong, your testimony was that there just
24 was -- weren't two sides of the story, right?

25 A Well, my testimony was that I made the decision to issue



1 discipline based on the investigation of Mr. Nordyke.

2 Q Right. But did -- did you not say that there were -- just
3 were -- there were not two sides of the story? Am I
4 misremembering?

5 MR. LUNDGREN: Misstates the testimony.

6 MR. BERGER: Well I'm asking.

7 Q BY MR. BERGER: Is -- is -- is it your -- let me just ask.
8 Were there two sides of the story worth hearing from drivers,
9 in conducting the investigations?

10 A Well, and -- and there may have been. And I think at one
11 point, we determined that we had issued an -- a letter in
12 error, and that's why we rescinded it. So if we had made a
13 mistake, we corrected it.

14 Q Okay. And interviewing drivers would be a good way to
15 identify mistakes, right?

16 A It would have been.

17 Q Fair enough.

18 MR. BERGER: Just give me one moment.

19 JUDGE WEDEKIND: Sure. Off the record.

20 (Off the record at 5:14 p.m.)

21 JUDGE WEDEKIND: Redirect?

22 MS. CHEREM: He -- he didn't say he had no further
23 questions on the record. We're all tired.

24 MR. BERGER: No -- no further questions from Charging
25 Party.

1 JUDGE WEDEKIND: All right. Thank you.

2 MR. LUNDGREN: Just a couple. Ross, could you put up
3 Joint Exhibit 2, please? And if you go to the -- the Bry --
4 Byron Baker, the first one. And we've been using Mr. Baker as
5 a sample, the 16 are all identical.

6 **REDIRECT EXAMINATION**

7 Q BY MR. LUNDGREN: And I wanted to ask you, Ms. O'Regan.
8 It's dated August 28th, 2017. Do you see that?

9 A I do.

10 Q Do you know when the -- the final determination as to the
11 level of discipline that would be issued -- do you know when
12 that was -- was made?

13 A I don't.

14 Q Did you have discussions with others prior to deciding the
15 level of discipline you would issue?

16 A I -- I'm sure that Brian Sleeper was very involved with
17 this decision. I can't tell you when we decided that it would
18 just be a warning letter. But I'm sure we had discussions.
19 And as I said before, we really wanted to let people know that
20 the behavior was incorrect, but we just wanted to get back to
21 work. That's why just the warning was issued, when really
22 something much more severe could have been issued for the
23 behavior.

24 MR. LUNDGREN: I have no further questions.

25 JUDGE WEDEKIND: Anything else?



1 MS. CHEREM: Nothing, Your Honor.

2 JUDGE WEDEKIND: All right, thank you very much, okay?

3 THE WITNESS: Okay.

4 JUDGE WEDEKIND: Hopefully you make your flight.

5 THE WITNESS: Thank you. I appreciate it.

6 MS. CHEREM: Are we off the record.

7 JUDGE WEDEKIND: Sure, let's go off for a minute.

8 **(Whereupon, the hearing in the above-entitled matter was**
9 **recessed at 5:16 p.m. until Friday, March 3, 2023 at 9:00 a.m.)**

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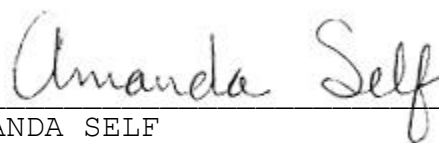
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C E R T I F I C A T I O N

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 19, Case Numbers 19-CA-203068 and 19-CA-211776, Glacier Northwest d/b/a CalPortland and Teamsters Union Local 174, held at the National Labor Relations Board, Region 19, Jackson Federal Building, South Auditorium, 4th Floor, 915 Second Avenue, Seattle, WA 98174, on March 2, 2023, at 9:02 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



AMANDA SELF

Official Reporter